TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 295 56.

THE ROGERS PARK WATER COMPANY, PLAINTIFF IN ERROR,

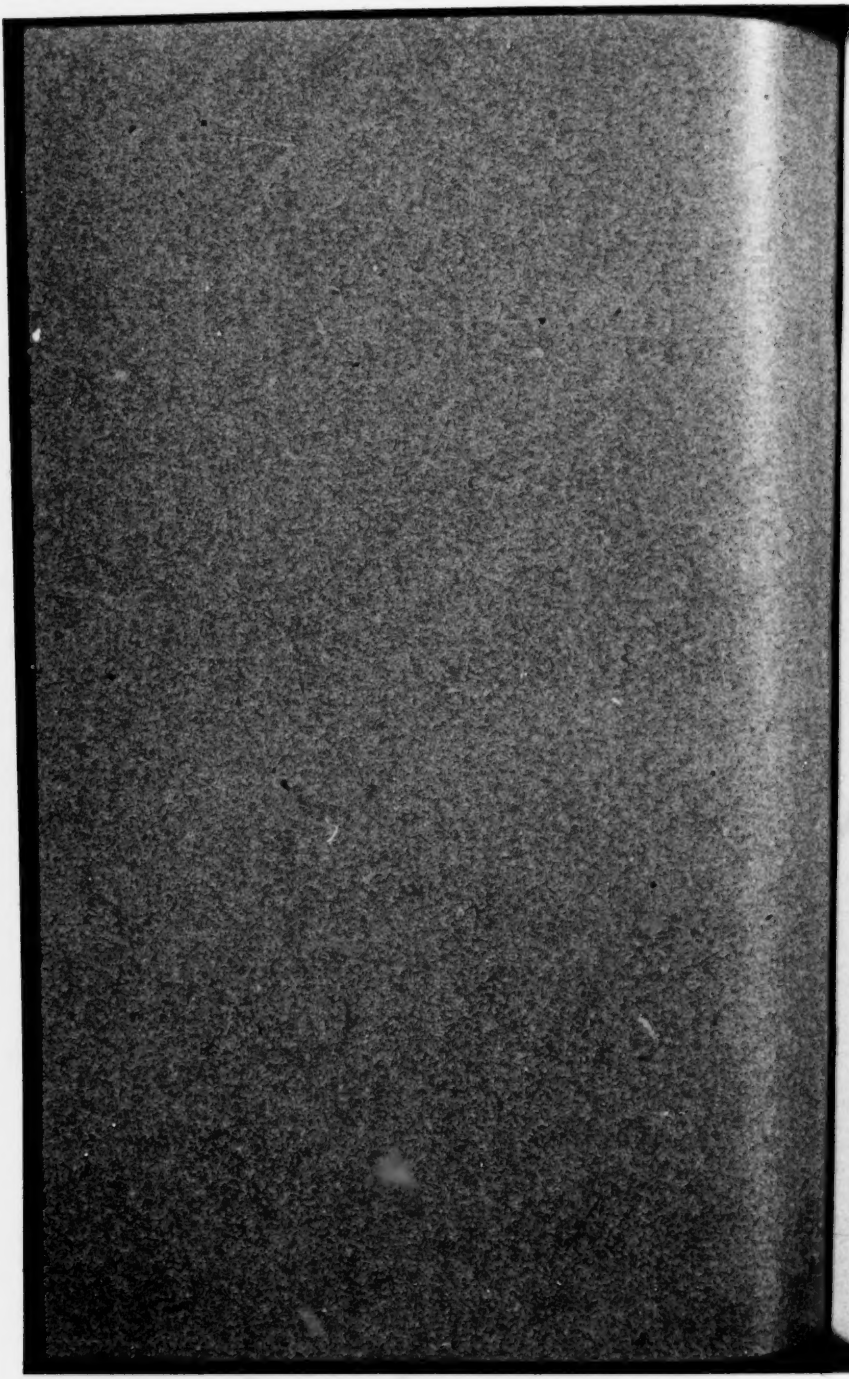
vs.

JOHN B. FERGUS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MAY 18, 1900.

(17,407.)



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a In the Supreme Court of the United States.

ROGERS PARK WATER COMPANY, a Corporation, Plaintiff in Error, vs. JOHN B. FERGUS, Defendant in Error.	Writ of Error to Supreme Court of Illinois.

Assignments of Error.

Now comes the plaintiff in error, Rogers Park Water Company, by N. A. Partridge, its attorney, this 14th day of April, A. D. 1899, and shows that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

Said supreme court of Illinois erred in deciding that the authority exercised under the State of Illinois by the city of Chicago in passing the certain ordinance of the fourth day of October, A. D. 1897, was valid, and in rendering its said judgment in said cause upholding the validity of said authority, which said authority and the exercise thereof was repugnant to the Constitution of the United States.

II.

Said supreme court of Illinois erred in deciding that the said ordinance of the city of Chicago, passed on the fourth day of October, A. D. 1897, was valid and erroneously rendered judgment in favor of the validity of said ordinance, which said authority and the exercise thereof was repugnant to the Constitution of the United States.

b III.

Said supreme court of Illinois erred in deciding that the rights and privileges conferred upon said plaintiff in error as assignee of the grantee of said ordinance passed on the 12th day of November, A. D. 1888, by said village of Rogers Park, were not vested rights, and erroneously entered judgment against said rights and privileges of the plaintiff in error, which were specially set up and claimed under the Constitution of the United States.

IV.

Said supreme court of Illinois erred in not overruling the demurrer interposed by the defendant in error to the third answer of the plaintiff in error.

V.

Said supreme court of Illinois erred in not reversing the order of the circuit court of Illinois awarding a peremptory writ of mandamus in favor of the defendant in error and against the plaintiff in error.

VI.

Said supreme court of Illinois erred in rendering judgment in said cause in favor of the defendant in error and against the plaintiff in error.

VII.

Said supreme court of Illinois erred in deciding that no contract to pay the rates for water which were charged by the plaintiff in error to the defendant in error existed between said defendant in error and the plaintiff in error by virtue of the application for water and the acceptance thereof in said record appearing, and which decision of said court impairs the obligation of said contract, in violation of the provisions of the Constitution of the United States.

Wherefore the said plaintiff in error, The Rogers Park Water Company, prays that the judgment of said supreme court of Illinois may be reversed by this honorable court.

NEWTON A. PARTRIDGE,
Attorney for said Plaintiff in Error.

c UNITED STATES OF AMERICA, *ss:*

To John B. Fergus, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, thirty (30) days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Rogers Park Water Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois, this 14th day of April, A. D. 1899.

JOSEPH N. CARTER,
Chief Justice of the Supreme Court of the State of Illinois.

Received copy of above this April 15th, 1899.

JESSE B. BARTON,
Attorney for John B. Fergus.

JOHN B. FERGUS,
By JESSE B. BARTON,
His Attorney.

d In the Supreme Court of Illinois.

ROGERS PARK WATER COMPANY, a Corporation,
vs.
JOHN B. FERGUS.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the fifteenth day of April, in the year of our Lord one

thousand eight hundred and ninety-nine, a copy of the foregoing citation and acceptance of service was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this twentieth day of April, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

e UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Illinois between The Rogers Park Water Company, a corporation, as appellant, and John B. Fergus, as appellee, a manifest error hath occurred, to the great damage of the said Rogers Park Water Company, as by its complaint appears, and wherein it is claimed its certain rights and privileges under the Constitution of the United States were decided against by your said court, and that your said court decided in favor of a certain authority exercised under the State of Illinois, which said authority and the exercise thereof was repugnant to the Constitution of the United States, we, being willing the said errors, if any hath been, shall be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

f Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14th day of April, in the year of our Lord 1899.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

JAMES T. JONES,
Clerk Circuit Court U. S., South. Dist. Ills.

Allowed by—

JOSEPH N. CARTER,
Chief Justice Supreme Court of Illinois.

g In the Supreme Court of Illinois.

ROGERS PARK WATER COMPANY, a Corporation,
vs.
JOHN B. FERGUS.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the fourteenth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for defendant in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of the said court this twentieth day of April, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk Supreme Court.

h In the Supreme Court of Illinois.

ROGERS PARK WATER COMPANY, a Corporation,
vs.
JOHN B. FERGUS.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division of said State, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages, numbered from one (1) to one hundred and eighty-eight (188), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a supreme court begun and held at Springfield, on Tuesday, the seventh day of June, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the day and year last aforesaid, to wit, the seventh day of June, A. D. 1898, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Cook county; which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Cook County, }

Please before the Honorable Elbridge Hanecy, one of the judges of the circuit court of Cook county, at a term thereof begun and held in the court-house, at Chicago, in said county and State, on the third Monday (being the 21st day) of March, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

Present: Honorable Elbridge Hanecy, one of the judges of the circuit court of Cook county, State of Illinois; Charles S. Deneen, State's attorney; James Pease, sheriff.

Attest: JOHN A. COOKE, *Clerk.*

3 Be it remembered that heretofore, to wit, on the 13th day of December, A. D. 1897, a certain People's writ of summons issued out of the office of the clerk of said court and under the seal thereof, directed to the sheriff of Cook county to execute; which said writ, together with the return of the sheriff thereon endorsed, *are* in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Rogers Park Water Company, if it shall be found in your county, personally to be and appear before the circuit court of Cook county on the 20th day of December, A. D. 1897, to be holden at the court-house, in the city of Chicago, in said Cook county, on the 20th day of December, 1897, to answer unto John B. Fergus in a certain petition for mandamus; and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness John A. Cooke, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 13th day of December, A. D. 1897.

[SEAL.] JOHN A. COOKE, *Clerk.*

4 The within-named defendant not found in any county this 20th day of December, 1897.

JAMES PEASE, *Sheriff,*
By E. E. LEE, *Deputy.*

And afterwards, to wit, on the 21st day of December, A. D. 1897, a certain alias writ of summons issued out of the office of the clerk of said court and under the seal thereof, directed to the sheriff of Cook county to execute; which said writ, together with the return of the sheriff thereon endorsed, *are* in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We again command you that you summon Rogers Park Water Company, if it shall be found in your county, personally to be and to appear before the circuit court of Cook county to be holden at the court-house, in the city of Chicago, in said Cook county, on the twenty-seventh day of December, A. D. 1897, to answer unto John B. Fergus in his certain petition for mandamus filed in said court: and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John A. Cooke, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 21st day of December, A. D. 1897.

[SEAL.] JOHN A. COOKE, *Clerk.*

5 Served this writ on the within-named Rogers Park Water Company, a corporation, by delivering a copy thereof to H. E. Keeler, president of said corporation, this 22nd day of December, 1897.

JAMES PEASE, *Sheriff,*
By E. E. LEE, *Deputy.*

Be it remembered that heretofore, to wit, on the 13th day of December, 1897, a certain petition for mandamus was filed in the office of the clerk of said court in words and figures following, to wit:

Petition.

STATE OF ILLINOIS, } ss.
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs. } Petition for Mandamus.
ROGERS PARK WATER COMPANY.

To the honorable judges of the circuit court of Cook county:

Your petitioner, John B. Fergus, respectfully represents that he is the tenant and occupant of the premises described as lot seven (7), in Horace A. Goodrich's subdivision of block nine (9), in North Shore Boulevard subdivision, being a subdivision of the east half of the southwest quarter of section thirty-two (32), township forty-
6 one (41) north, range fourteen (14) east, of the third principal meridian, except the south thirty (30) acres thereof, situated

in the county of Cook and State of Illinois, and as such occupant and tenant is obliged to pay all water rates legally assessed against and levied upon said property.

That there is situated upon said premises and occupied by your petitioner a certain dwelling-house having a frontage of forty-eight (48) feet, facing on the Sheridan road or drive, a public street running through said subdivision; that said dwelling-house is two (2) stories in height, and is occupied by your petitioner's family only, which family consists of less than twelve (12) persons, including all children, boarders, employés, and servants; that said dwelling-house contains but one bathing tub, two water-closets, no urinal, three wash-hand basins with faucets, and is not heated with steam, connected with any piping hereinafter mentioned, nor has it any green-house attached thereto, but has one hose used for sprinkling or washing walks, windows, and like purposes; that no building other than said dwelling-house is situated on said premises; that said premises are situated in that part of the city of Chicago which was formally the village of Rogers Park.

That said village of Rogers Park, on the 12th day of November, 1888, and thenceforth and until the 4th day of April, 1893, was a municipal corporation organized and existing under chapter 24 of the Revised Statutes of the State of Illinois and the amendments thereto; that on or about said 4th day of April, 1893, the said village of Rogers Park became annexed to and ever since has been and still is a part of the city of Chicago, a municipal corporation
organized and existing under said chapter 24 of said Revised
7 Statutes and the amendments thereto.

And your petitioner further represents that the Rogers Park Water Company is a corporation incorporated on or about the 24th day of January, 1889, under chapter 32 of the Revised Statutes of the State of Illinois and the amendments thereto, having for the object of its incorporation "to locate, construct, and operate a system of water works, with all appliances for pumping and distributing water in the village of Rogers Park, in said county and State, and its vicinity, to own all real estate used in connection therewith, and to construct and operate all machinery and appliances to furnish electricity for light, heat, and power in said locality;" that in pursuance of its said object of incorporation the said Rogers Park Water Company did, soon after its said incorporation, locate, construct, and put in operation a system of water works with all appliances for pumping and distributing water in said village of Rogers Park, including water mains and supply pipes laid in and along the public streets of said village and that part of said city of Chicago which was formally the village of Rogers Park, and on or about the 9th of May, 1892, laid a water pipe in said Sheridan road or drive and in front of the said premises so as aforesaid occupied by your petitioner; that said water pipe so laid in Sheridan road or drive is connected with the appliances of said company for pumping water, and is used by said company for distributing water to the occupants of premises situated along and on said Sheridan road or drive, and is connected with the said dwelling-house

so as aforesaid occupied by your petitioners by the usual
8 water supply pipe, in which is set or constructed a cock for the purpose of letting the water into the said dwelling-house or shutting off therefrom; that by reason of its incorporation as aforesaid and the location, construction, and operation of said system of water works and appliances for pumping and distributing water and the laying of said water mains in the streets aforesaid the said company has become a common distributor of water to the inhabitants of the territory formerly known as the village of Rogers Park, and has held itself out as such; that on, to wit, October 4, 1897, the city council of the city of Chicago passed an ordinance, which was, on or about October 11, 1897, approved by the mayor of said city, in which it was ordained that the maximum rates and charges for the supply of water furnished by the Rogers Park Water Company to the inhabitants of that part of the city of Chicago in which said company has been or may be authorized to lay water mains and supply pipes are hereby established and fixed so as to be uniform and equal in every particular with those charged by the city of Chicago for water supplied from the city water works.

That on said October 4, 1897, there was and ever since has been in force in said city of Chicago an ordinance establishing the maximum water rates charged by the city of Chicago for water supplied from the city water works, whereby the maximum rates per annum for dwelling-houses two stories in height and having a frontage of forty-eight feet were fixed at $15.50; for water-closets in private dwelling-houses, beyond one, each $3.00 per annum, and wash-hand basins with faucets, beyond one, $1.00 per annum, and $3.00 per annum for each hose used for sprinkling, etc.

9 That said Chicago city water rates were made payable in two semi-annual installments in advance, due on the first day of November and of May, respectively, with a discount of fifteen (15%) per cent. if paid on or before the 15th day of December and June respectively, the semi-annual installment due November 1st being for one-half of the aggregate of said water rates, except those charged for hose, and the whole of said annual charge for a hose being payable with the installment due May 1st; that the maximum water rates or charges due on the dwelling-house so, as aforesaid, occupied by your petitioner, — uniform and equal in every particular with those charged by the city of Chicago for water supplied from the city water works for the half year from November 1st, 1897, to May 1st, 1898, and due November 1st, 1897, if paid on or before December 15th, 1897, amount to the sum of $8.72.

And your petitioner further represents that he did prior to the 1st day of November, 1897, cause the several water fixtures in the said dwelling-house to be connected with the main water supply pipe of said Rogers Park Water Company so, as aforesaid, laid in said Sheridan road or drive, and did on the 11th day of December, 1897, tender to said Rogers Park Water Company, in lawful money of the United States, the said sum of $8.72, and then and there requested and demanded of said company that it turn the water from its said water supply or main pipe in said Sheridan road or drive

into the pipes leading to said dwelling-house, and thereby supply water to your petitioner and his said family, but the said Rogers Park Water Company then and there refused, and still does refuse, to turn on said water and supply your petitioner with water unless your petitioner pays to it the sum of $13.50, being the sum demanded by it for supplying water to said dwelling-house for
10 the half year beginning November 1st, 1897, and your petitioner says that he stands ready and willing to pay, and hereby offers and tenders to said Rogers Park Water Company, the said sum of $8.72 for a supply of water to said dwelling-house for the half year aforesaid.

And your petitioner further represents that by reason of the premises the said Rogers Park Water Company has assumed the duty and it is its duty to furnish water to your petitioner for use in said dwelling-house for the half year commencing November 1st, 1897, upon the payment by your petitioner of the said sum of $8.72; and your petitioner has the clear legal right, upon the payment or lawful tender to said Rogers Park Water Company of said sum of $8.72, to demand of it that it turn the water from its said main or supply pipe in said Sheridan road or drive into the pipe in said dwelling-house and to supply water to said dwelling-house up to and until May 1st, 1898.

Wherefore your petitioner prays that a writ of mandamus issue out of this honorable court, directed to the said Rogers Park Water Company, commanding it to receive said sum of $8.72, which your petitioner stands ready and willing to pay, and hereby offers to pay into court for the use of said company, and thereupon to turn on and supply to your petitioner in said dwelling-house water until the 1st day of May, 1898, and that such further order may be made in the premises as justice may require, etc.

That the writ of summons issue, returnable in a short day, as required by the statutes in such case made and provided and as this honorable court shall direct, commanding the said Rogers Park Water Company to answer this petition and show cause why
11 a writ of mandamus should not issue, as aforesaid.

JOHN B. FERGUS.

JESSE B. BARTON,
Petitioner's Attorney.

STATE OF ILLINOIS, } ss:
County of Cook, }

John B. Fergus, being duly sworn, says that he is the petitioner in the above and foregoing petition; that he has read the same and knows the contents thereof, and that the same is true.

JOHN B. FERGUS.

Subscribed and sworn to before me this 13th day of December, 1897.

[SEAL.] HENRY H. BREGSTONE,
Notary Public.

Let a writ of summons issue returnable Dec. 20th, 1897.
JOHN GIBBONS, *Judge.*

And afterwards, to wit, on the 27th day of December, A. D. 1897, a certain appearance was filed in the office of the clerk of said court in words and figures following, to wit:

12 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

We hereby enter the appearance of the Rogers Park Water Company, a corporation, etc., defendant in the above-entitled cause, and our appearance as its attorneys.

(Endorsed on back:) 178,846, 22899. Circuit court of Cook county. John B. Fergus *vs.* Rogers Park Water Company. Appearance. Filed December 27, '97. P'd $3.00. John A. Cooke, clerk. Partridge & Partridge, attorneys-at-law, Borden block, Chicago.

13 And afterwards, to wit, on the 3rd day of January, A. D. 1898, a certain demurrer was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

Now comes the defendant, The Rogers Park Water Company, a corporation, etc., in the above-entitled cause, by Partridge & Partridge, its attorneys, and demurs to the petition for mandamus heretofore filed herein by said petitioner, John B. Fergus, and says that the matters and things in said petition contained in manner and form as therein set forth are not sufficient in law to entitle the said petitioner to the relief therein prayed for, nor to any part thereof, against this defendant.

And the defendant shows to the court the following causes of demurrer:

1. The said petition alleges that the petitioner is obligated to pay all water rates legally assessed against and levied upon the said real estate and property in said petition described; but no foundation or ground for such liability nor for any legal liability on the part of said petitioner to pay the said rates, or any part thereof, is

therein set forth and stated, nor does it appear by the said
14 petition that the said water rates nor any water rates which have been or may be assessed against the said real estate and property by the defendant would be or become a legal liability or lien against or upon said premises or against said petitioner.

2. The said petition does not allege that the defendant now has or has ever received any authority, license, grant, privilege, or franchise from the village of Rogers Park or the city of Chicago which authorizes the defendant to lays its pipes for the distribution of water in the public streets, grounds, or ways contained within the district or territory formerly comprised in said village of Rogers Park, but the defendants says that without such grant of authority and acceptance thereof by this defendant no public duty or liability would be imposed or rest on this defendant to supply water to the said premises nor to the petitioner nor to the inhabitants along the lines of its water mains.

3. The said petition does not allege or set forth that the defendant is or has been at any time authorized by said village of Rogers Park or by the city of Chicago to lay water mains and supply pipes in the said street called Sheridan road or drive, so that it does not appear by said petition that the supply of water by the defendant to the said premises and to the petitioner are within the provisions of the said supposed ordinance of the city of Chicago alleged to have been passed October 4th, 1897, and approved on or about October 11th, 1897.

4. The said supposed ordinance of October 4th, 1897, is not set forth with sufficient particularity and the provisions thereof do not sufficiently appear in and by said petition.

15 5. The said petition fails to allege sufficient facts to show that the petitioner is entitled to the relief, or any part thereof, therein prayed for against said defendant.

Wherefore, and for other good causes of demurrer appearing upon the face of said petition, this defendant demurs to the said petition, and says that the same is not sufficient in law to require this defendant to make answer or return thereunto, nor for the said petitioner to have or maintain his aforesaid action against this defendant.

And this it is ready to verify. Wherefore it prays judgment, etc.

PARTRIDGE & PARTRIDGE,
Defendant's Attorneys.

And afterwards, to wit, on the 13th day of January, A. D. 1898, a certain answer was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

Answer.

Now comes the defendant, The Rogers Park Water Company, a corporation, etc., by Partridge & Partridge, its attorneys, and makes answer unto the said petition heretofore filed in the above-entitled cause, and, answering, says:

16 This defendant admits that said petitioner, John B. Fergus, at the time of filing said petition was and still is the occupant of said premises in said petition described, and that he resides in the dwelling-house in said petition referred to, but the defendant denies that said house is no more than two stories in height, and denies that said petition truly sets forth the various appliances and fixtures in said house and on said premises for the supply of water to the inhabitants thereof.

This defendant admits that said premises are situated in that part of the city of Chicago which was formerly the village of Rogers Park; that said village during the time in said petition named was a municipal corporation, as therein set forth; that said village on or about the 4th day of April, 1893, became annexed to, ever since has been, and still is a part of the city of Chicago, which is a municipal corporation, as set forth in said petition.

Further answering, this defendant alleges that on and before the said 12th day of November, A. D. 1888, the said village of Rogers Park was desirous of obtaining a supply of water for public use in the manner and form by statute provided, and that thereupon, for the purpose of obtaining a supply of water for public use, the board of trustees of the said village of Rogers Park on said 12th day of November, 1888, passed a certain ordinance, which ordinance was on the same day duly approved by the president of said village of Rogers Park, and which ordinance is entitled and is in substance as follows:

17 An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works.

Be it ordained by the board of trustees of the village of Rogers Park, Cook county, Illinois.

SECTION 1. That in consideration of the public benefit to be derived therefrom the village of Rogers Park Illinois, hereby grants the exclusive right and privilege for the period of thirty years from the time that this ordinance takes effect unto H. E. Keeler, his suc-

cessors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and the said village thereby grants the exclusive right of using the streets, alleys, public squares and all other public places within the corporate limits of said village as they now exist, or may hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for furnishing storing, and conducting an adequate supply of good wholesome clear water to the said village and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said grantee, his successors and assigns, shall exercise
18 care and diligence in the use of the said streets, alleys, public squares and other public places, and shall cause no unnecessary obstruction of, or interruption of the public travel over or upon same or any injury to, or interference with any pipes, mains, or sewers which *now* be lawfully located beneath thereof.

That said grantee, his successors and assigns, shall take due precaution to provide against danger to life and limb by reason of the exercise of their rights and privileges, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purpose for which said streets, alleys, public squares and other public places may be used, they shall be restored to their former conditions as near as may be without unnecessary delay.

The said grantee, his successors and assigns, hereby agree to hold the said village harmless from liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the system of said water works shall be as follows: same to be subject to approval of the village board of trustees.

Mains.—These shall be ample in size to supply water to meet the demands for water for fire and domestic purposes and shall vary in diameter from 12 inches to 4 inches.

They shall be of the best quality of cast-iron pipe and will be tested at the foundry to a pressure of three hundred (300) pounds to the square inch, and shall be tested after the works are completed to a pressure of 125 pounds per square inch, as shown
19 by a *guage* attached to a hydrant near the Chicago & Northwestern Railroad depot, and remain tight under said pressure, provided that no single length of four-inch remain longer than eight hundred (800) feet shall be constructed and laid.

Hydrants.—These shall be of the best kind and quality manufactured, shall be provided with two hose nozzles and shall be frostproof. They shall be strong enough to stand the same test as those provided for the mains. The grantee, or assigns, shall furnish at their expense sixty hydrants with their branch castings and connections and located in such places upon the first five miles of mains as the trustees may direct. Said location to be made within

thirty days after the accepting of this ordinance, and if the village shall at any time in the future elect to place intermediate hydrants on the said first five miles of mains such hydrants shall be placed by the grantee or assigns at the expense of the village — shall pay the necessary expense of keeping them in order, but shall pay no rent therefor. Those furnished and located at the time the mains are laid shall be erected and connected with mains by the grantee or assigns. Those furnished and located thereafter shall be erected and connected with the mains by the grantee or assigns, but the cost thereof shall be paid by the village of Rogers Park. Said hydrants shall be under the sole charge, for said village, of the chief of the fire department, and all repairs and damages except those caused by ordinary wear and tear shall be repaired by said grantee or assigns and the actual cost of such repairs shall be paid by the village.

20 Gates and valves.—These shall be of the best quality and shall stand successfully the test prescribed for the mains.

Pumps.—The pumping machinery used shall be one compound and one high-pressure duplex pumping engine, and shall at the outset have a capacity sufficient for fulfilling the terms and conditions of this ordinance, same to be of not less than 1,500,000 gallons capacity in 24 hours, and shall have boilers of capacity to furnish sufficient steam for them when running at full speed. It and its appurtenances shall be of the best make, strong and durable. It will be kept in good working order at all times, saving unavoidable accidents, and its total capacity shall be increased from time to time as the needs of the village may require. It will be so arranged that the connection with stand-pipe may be closed instantly and that it will pump directly into the mains.

Stand-pipe.—This shall be built of steel and shall be not less than 12 feet in diameter. Its top shall not be less than 100 feet above the elevation of the ground in front the C. & N. W. R. R. depot in said village of Rogers Park. It shall at all times be kept as nearly full as is practical.

SECTION 3. In consideration of public benefits and the protection to property resulting from the construction of the said system of water works, the said village hereby agrees to pay an annual rental for fire protection to the said grantee, his successors or assigns, for not less than five miles of mains within the corporate limits of said village, for the aforesaid period of thirty years, at the annual rate of five hundred and seventy-five (575) dollars for each mile of

21 mains, to be payable semi annually on the first day of January and July in each year. In further consideration the village of Rogers Park agrees to pay all municipal or village taxes which may be assessed against the plant of the said grantee, assigns, for the first ten years the water works are operated. The rental for fire protection of mains in excess of the first five miles laid, as thereinafter provided, at the request of the said village shall be at the annual rate of four hundred dollars for each mile of mains, payable as aforesaid during the unexpired period of the said original term of thirty years. The rental shall begin at such time

as the said grantee or assigns shall begin to maintain continuously a pressure of 40 pounds a square inch.

Water shall be used from the hydrants for the extinguishment of fires, and for flushing sewers only. In flushing sewers automatic devices may be used and so regulated that they shall not discharge more than 60 gallons each per day, and, that there shall not be more than ten for each mile of mains, and the same shall be always kept in working condition by the village and all waste of water prevented. The village shall have also the right to use water from all the public hydrants during the full term and continuance of this franchise and contract for the purpose of flushing public sewers and gutters whenever the said village shall deem it necessary for sanitary purposes, upon giving notice to said grantee or assigns at the pumping station. Said flushing to be done by the village through hose and fire nozzle only, but there shall not be more than two hydrants open at one time for such purpose,
22 and no one hydrant shall be opened oftener than twice a week and not longer than twenty minutes at one time for such purpose, and there shall be no flushing in the time of fire. The village shall use the water provided in all of above cases in a reasonable manner and without unnecessary waste. Said grantee, his successors and assigns, hereby agree to furnish without additional charge, in consideration of franchise and rentals, hereby agreed to be paid by said village, water sufficient to supply two public drinking fountains for the use of man and beast.

The supply of each shall not be larger than one-half inch in diameter, to be constructed at such places in said village as said village board may direct. Also one jet fountain of not to exceed $\frac{1}{8}$-inch orifice in each of the public parks of said village: also water sufficient to supply each of the public schools in said village, and also at the public offices of said village, and for the use of the fire department at the engine-houses of said village. The said village agrees to furnish said fountains, faucets, etc., and furnish all material and pay the expenses of connecting same with the mains of grantee or assigns and to use every precaution to prevent all waste of water.

SECTION 4. Said grantee, his successors and assigns, in consideration of the rentals herein agreed to be paid and in consideration of the rights and privileges granted, expressly agrees on its part to furnish to said village of Rogers Park, and to the residents thereof,
23 an adequate supply of good, wholesome and clear water fit for culinary and drinking purposes; said water to be taken from Lake Michigan at such a point near the north boundary line of said village as will best insure its freedom from sewer contamination, and it shall be filtered by the most modern and by an acceptable process before being delivered into the mains for supplying said village, and if said grantee, his successors and assigns, shall at any time fail to furnish a supply of water to the said village and the residents thereof, of the quality and quantity provided for in the ordinance, then all rentals to be paid by said village to said grantee or assigns, shall cease until said grantee or assigns shall

provide and supply water of the degree of purity and in the quantity provided for in this ordinance; and also provided that should said grantee or assigns fail to supply water of the quality and quantity and in the manner aforesaid to said village and its inhabitants for a greater length of time than one year at any one time, and after having been given due notification by said village, that the authorities of said village consider the supply of water, either in quality or quantity, nor in compliance with this ordinance, then the said grantees or assigns shall forfeit and surrender to said village its said franchise and all other rights and privileges granted under this ordinance and the contract herein entered into shall be null and void. Said grantee or assigns further agrees to furnish such steam as may be needed for running one or more air-compressors to be furnished by said village and located in the pumping station of said grantee or assigns—the total power used by said air-compressors shall at the outset not exceed ten-horse power. All power in excess
24 of that above provided, which said village may need for running air-compressors, shall be furnished by said grantee or assigns at a cost of seventy-five dollars per horse-power per annum.

SECTION 5. Upon the completion of *of* the construction of the said system of water the said grantee or assigns shall notify the board of trustees of said village to that effect and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw water through 100 feet of 2½ inch hose and one-inch nozzle from each of six different hydrants not located on the same main, to a height of 90 feet above the level of the ground at the C. & N. W. R. R. depot when the air is still.

The performance at this test shall be a fulfillment by the grantee or assigns of the terms and conditions of this ordinance so far as relates to strength and capacity. Said grantee and assigns shall so maintain and enlarge said water works that they will at all times be capable of performing such tests, and said village board shall have the right to order a repetition of such tests annually by giving said grantee or assigns a written notice of thirty days, and a failure on the part of said grantee or assigns to make such test shall cause a suspension of said rental until said grantee or assigns successfully perform such test.

SECTION 6. Within sixty days after the day that this ordinance takes effect, the said grantee or assigns shall file a written acceptance thereof in the office of the village clerk, and at least $5,000.00 work and material on said works shall be done and furnished
25 before December 31, 1888. The construction of said water works shall be commenced within 60 days after this ordinance takes effect, and said water works shall be completed within one year after the commencement of the construction thereof, provided however, that the time during which said grantee or assigns are delayed by strikes, floods, act of God or the public enemy, legal proceedings for the maintenance or defense of their rights or in the acquisition of property, water rights, right of way, mutinous interference or by reason of any other cause whatever beyond its control,

shall form no part of the time limited in this ordinance for the performance of any act required by the terms thereof to be done by them.

SECTION 7. The said village board of trustees shall, from time to time, pass and enact ordinances under suitable penalties, providing for the protection of said works from damage, fraud or imposition.

SECTION 8. At the expiration of ten years after the completion of the said works and at the expiration of each succeeding period of five years thereafter the said village shall have the right and privilege to purchase said system of water works, provided that they notify the said grantee or assigns of their intention so to do at least six months before the expiration of said period or periods of years. The value of said system shall be ascertained as follows: The said grantee or assigns and the said village shall each appoint one person, and the two appointees shall choose a third, and the three persons then chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. In case the two experts chosen disagree upon the
26 selection of the third he shall be appointed by the judge of the circuit court of some adjoining circuit. None of the board shall be residents of the village of Rogers Park, Ill. The said board in fixing the value of said works shall take into consideration the value of the franchise, the value of water rights and right of way, the revenue from the works, and all other facts and considerations legitimately connected with the said works. The said village shall within sixty days after the said board has rendered its decision pay the amount awarded in cash, and upon such payments said grantee or assigns shall transfer to the said village all their said rights and priveleges and property included *to* the said appraisement.

SECTION 9. The said grantee or assigns shall make extensions of mains whenever called upon to do so by the village board of said village, provided however that said extensions, shall be not less than 500 feet in length, and further provided that there shall be one water consumer for each 100 feet along the line of such extensions who shall agree to take water at the established rates for a period of at least two years but as a condition of making such extensions the village agrees to pay for public fire service upon such extensions at the rate of four hundred dollars per annum for each mile of such extension for the unexpired term of this franchise and contract.

SECTION 10. After the said works are put in operation, if at any time, the said grantee or assigns are unable to provide a fire pressure of 60 pounds on the distributing mains at the said C. & N. W. R. R. depot for a period of two weeks in succession, then the rental for the use and employment of the mains for the purpose aforesaid
27 shall cease until such standard of pressure shall be attained. Nothing herein contained shall be so construed as to prevent the said grantee or assigns from temporarily shutting off the water from its said system, or any portion thereof, for the purpose of making repairs or extensions to the same, and no liability shall attach to the said grantee or assigns for the suspension of the supply of

water, provided the repairs or extensions are made and the water turned on again without unnecessary delay.

SECTION 11. The said grantee or assigns shall have the right to make, alter, amend and enforce rules for governing the connections with their mains, and the use of the water and for preventing the waste of water.

SECTION 12. The said grantee or assigns shall charge the following annual water rates to consumers of water during the existence of this franchise, and they shall have the right at any time to insert a water meter into the service pipe of any consumer and to charge and collect from them at meter rates, provided that in such case the minimum annual rate paid by any one consumer shall be five dollars.

Tariff of Water Rates.

Barber shop, first chair	$5.00
Barber shop, each additional chair	3.00
Bath-house, public, each	$7 to 15.00
Bath, private, each tub	3.00
Bath, boarding-house, each tub	5.00
Blacksmith shops, one fire	4.00
Blacksmith shop, each additional fire	3.00
28 Boarding and lodging houses and furnished rooms per room	1.00
Boarding schools, per room	1.00
Butcher shops, engines and boilers extra	$7 to 15.00
Dental office	6 to 10.00
Drug stores	10 to 25.00
Dwelling-houses, 5 rooms or less for family	6.00
Dwelling-houses, each additional room	1.00
Eating-houses	$10 to 25.00
Fountains flowing not exceeding three hours per day during the season from 1st of April to 1st of November, one-sixteenth orifice	8.00
Fountains one eight-jet for the season as above	10.00
Hose for sprinkling streets, including washing and sprinkling sidewalks, the outsides of buildings per lineal front foot, business houses per season of 6 months	15.00
Same as foregoing private houses per front foot	10.00
Hose for sprinkling lawns, 66 feet frontage	5.00
Hose for sprinkling lawns, each front foot in excess of 66 feet	05
Hotels, per room	1.00
Livery, sale and feed stables, per single stall including carriage-washing	3.50
Private stable, 1 horse, including carriage-washing	3.00
Private stables, each additional animal	1.50
Stores not specified otherwise, 22 feet front first floor	7.00
Stores, each additional floor	3.50
29 Stores, each additional front foot	.50
Urinals and hotels, boarding-houses	6.00

Urinals in blocks, mfg. establishments	4.00
Urinals in stores, banks and offices	3.00
Urinals in private houses	3.00

Urinals with constant flow special rates.

Wash-basins, stationary, first basin in private family free, all others each	3.00
Water-closets per bowl	3.00
" " " " public	5.00

Yard hydrants at dwelling or boarding-house rates.

All persons not satisfied at the schedule rates can have the privilege of putting in a water meter at their own expense.

Meter Rates.

Less than 300 gals. per day, per 100 gals	.050
300–400 gals. per day per 100 gals	.045
400–1,000 " " " " " "	.040
1,000–3,000 " " " " " "	.035
3,000–5,000 " " " " " "	.030
5,000 gals. and upwards per 100 gals	.025
10,00- gals. and upwards, per 100 gals	.020

Rates for all other purposes that may be applied for not named in the foregoing schedule of maximum rates will be fixed by estimation or meter, at the option of the grantee or assigns.

SECTION 13. A sufficient tax shall be levied and collected annually upon all taxable property in the village subject by law to such taxation to meet the payments under this ordinance as they may respectively mature, during the existence of any contract for public fire service, which tax shall be irrepealable from and after the passage of this ordinance, and in case the village shall be authorized to levy a special tax for such purposes, such tax shall be annually levied and the proceeds thereof shall be kept as a separate fund to be known as a fire-hydrant fund, and shall be irrevocably and exclusively devoted to the payment of hydrant rentals under this ordinance, and shall not be otherwise employed except that any excess of said tax in any one year over the amount necessary to pay rentals for such year may be used for any purpose that the village of Rogers Park may direct.

SECTION 14. Within 60 days after the passage of this ordinance said H. E. Keeler, his successors or assigns, shall file with the village an acceptance of the same, which acceptance duly acknowledged, before some officer duly authorized to administer oaths shall have the effect of a contract between the village and said H. E. Keeler, his successors or assigns.

Approved Nov. 12, A. D. 1888.

HENRY P. DALY,
President Board of Trustees.

Passed Nov. 12, A. D. 1888.

JOHN L. HEALY,
Village Clerk.

31 Further answering, this defendant says that on or about the 8th day of January, 1889, said H. E. Keeler, the grantee under said ordinance, presented to the said board of trustees and filed with the clerk of said village his acceptance of the said ordinance, and which acceptance was in substance as follows:

CHICAGO, *Jan.* 8, 1889.

To the board of trustees, village of Rogers Park, Ill.

DEAR SIRS: I hereby accept, as per section 14, the ordinance passed and approved Nov. 12th, 1888—An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works.

Yours respectively, H. E. KEELER. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Louis Danziger, a notary public in and for said county, in the State aforesaid, do hereby certify that H. E. Keeler, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

32 Given under my hand and notarial seal this ninth day of January, 1889.

LOUIS DANZIGER,
Notary Public. [SEAL.]

This defendant further admits that it is a corporation duly incorporated on or about the 24th day of January, 1889, under the statutes of the State of Illinois, having for the object of its incorporation, among other things, to locate, construct, and operate a system of water works, with all appliances for pumping and distributing water, in the village of Rogers Park, in said Cook county and State of Illinois, and its vicinity, and to own real estate used in connection therewith.

Further answering, this defendant alleges that on or about the 31st day of January, 1889, the said H. E. Keeler, the grantee named in said ordinance passed on the 12th day of November, 1888, by the board of trustees of said village of Rogers Park, duly assigned his rights and privileges under the said ordinance to this defendant, and that thereupon it became possessed of all the rights, benefits, and privileges, franchises, and immunities granted by or contained in the said ordinance or belonging to or in anywise growing out of the same, as assigned by said grantee, and that this defendant has ever since been and now is so possessed.

This defendant further admits that in pursuance of the said object of its incorporation this defendant did, soon after its incorporation, erect, construct, and put in operation a system of water

works, with all appliances for pumping and distributing
33 water, in said village of Rogers Park, including water mains and supply pipes in the public streets of said village, and in that part of the city of Chicago which was formally the village of Rogers Park, and this defendant alleges that each and all of said acts and things were done by the authority and virtue of the said ordinance thereinbefore set forth and not otherwise, and this defendant alleges and insists that thereupon and by virtue of the passage of the said ordinance and the acceptance by the said grantee therein named and the said assignment and acceptance thereof by this defendant that the said ordinance, together with the rights, priveleges, benefits, and immunities therein and thereby granted, became and constituted a contract between this defendant and the said village of Rogers Park and the city of Chicago.

This defendant admits that on or about the 9th day of May, 1897, it laid a certain water pipe or main in said street called the Sheridan road or drive and in front of the said premises occupied by said petitioner and in said petition described, and that said water main is part of the system of pipes for the distribution of water operated by this defendant and is connected with its pumping station; that said water main is connected by a supply pipe with the appliances and fixtures contained in said dwelling-house for the purpose of supplying water to the occupants thereof, and that there is set in said supply pipe a cock for the purpose of letting on and shutting off the water between the said main and the said dwelling-house.

This defendant admits that on or before October 4th, 1897, and ever since that time there has been in force in the city of Chicago aforesaid an ordinance establishing the maximum water
34 rates charged by the city of Chicago for water supplied from the Chicago city water works, whereby the maximum water rates per annum for dwelling-houses are fixed substantially as in said petition set forth, but this defendant denies that the maximum water rates or charges due on said dwelling-house so occupied by said petitioner, if uniform and equal in every particular with those charged by the city of Chicago for a water supply from the Chicago city water works for the year from November 1st, 1897, to May 1st, 1898, if paid on or before December 15th, would amount to the sum of eight dollars and $\frac{72}{100}$ths, $8.72; but, on the contrary thereof, this defendant alleges that the amount of said rates would exceed the said sum by a large amount.

Further answering, this defendant denies that on October 4th, 1897, or on any other day the city council of the city of Chicago passed any legal and valid ordinance, in which it was ordained that the maximum rates and charges for the supply of water furnished by this defendant to the inhabitants of that part of the city of Chicago in which this defendant had been or might be authorized to lay water mains and supply pipes were established or fixed so as to be uniform and equal with those charged by the city of Chicago for water supply from the Chicago city water works; and this defendant alleges and insists that if any such supposed ordinance was

pretended to be so passed, as alleged in said petition, that such ordinance was void, illegal, and of no effect, because the said ordinances and contract hereinbefore set forth was then a valid and subsisting contract between the city of Chicago and this de-
35 fendant, and the said city of Chicago and the council thereof were without any right, power, or authority to change the terms of the said ordinance and contract, which fixed a rate to be charged by this defendant to the inhabitants of that part of the city of Chicago formerly comprised in said village of Rogers Park and including the premises in said petition set forth; and this defendant alleges and insists that by reason of the premises the said supposed ordinance was and is utterly void, without any force, effect, or legal authority whatever.

This defendant admits that the petitioner did, on or about the 11th day of December, A. D. 1897, tender to this defendant the said sum of eight dollars and $\frac{72}{100}$ths ($8.72), and requested and demanded that this defendant turn the water from its said water main in said Sheridan road or drive into the supply pipe leading to said dwelling-house so as to supply water to the petitioner; and this defendant admits that it demanded of said petitioner that he pay to it the amount of money so fixed and established by the said ordinance and contract then existing and in full force and validity, as above set forth, between this defendant and the said city of Chicago, of all of which the petitioner then and there had notice, but that to pay the said sum the petitioner then and there refused. Wherefore, for want of a sufficient tender and payment in that behalf, this defendant refused to turn on the said water and to supply the petitioner therewith; and this defendant says that the petitioner is deprived of the said water by means of his own wrongful neglect and refused to pay to this defendant the amount of its just, reasonable, and lawful charges in that behalf, and not otherwise, and this
36 the defendant is ready to verify. Wherefore it prays that the said petition may be dismissed, and that it may go thereof without day, and may recover its costs and charges in this behalf by it most wrongfully expended.

ROGERS PARK WATER COMPANY,
By PARTRIDGE & PARTRIDGE,
Its Attorneys.

And for a further answer in this behalf the defendant says that the said petitioner ought not to have or maintain his aforesaid petition against this defendant, because it says that before the said time when, etc., and after the said water main or pipe had been laid or constructed in front of the said premises on Sheridan road or drive, in said city of Chicago, and, to wit, on or about the 17th day of May, 1897, in said county, the said petitioner represented and stated himself to be the owner of said premises and applied to the defendant and requested it to permit an opening or tap to be made and placed in said water main and a connecting pipe to be laid between the said water main and the fixtures for the use of water contained in said premises and dwelling-house; and thereupon the said peti-

tioner made a written application to this defendant for the purposes aforesaid, which application was thereupon accepted by the defendant and which application and acceptance thereof constituted a contract between the said petitioner and this defendant, anwhich application then and there was made, executed, and delivered by the petitioner to the defendant, and which application was in writing and was in substance as follows:

37 APPLICATION No. 681.

Application for a Supply of Water.

ROGERS PARK, ILL., *May* 17, 1897.

To superintendent Rogers Park Water Company:

I, the undersigned, hereby request and contract for a supply of water from the company's mains to premises known as lot 7, block 9, No. 3229 Sheridan road, located on the west side of Sheridan road, between Devon and Albion Ave., in said village, and for use and from fixtures as en[illegible]rated on the margin hereof; said water to be supplied subject to the rules and regulations of said company now in force or which may hereafter be enacted or adopted, which rules and regulations are hereby made and declared to be a part of the contract between me and said company for supplying said premises with water.

J. B. FERGUS, *Owner.*

1 tap, 1 street washer or sill cock, 3 basins, 1 bath-tub, 2 water-closets, 11 rooms, 100 feet lawn.

And this defendant says before and at the time of the said application the water rates prescribed by said rules and regulations to be paid by the inhabitants of that part of the city of Chicago formerly comprised within said village of Rogers Park and including the said premises were and ever since have been as follows:

Barber shop, first chair	$5.00
Barber shop, each additional chair	3.00
Bath-house, public, each	7.00 to 15.00
Bath, private, each tub	3.00
Bath, boarding-house, each tub	5.00
Blacksmith shop, one fire	4.00
Blacksmith shop, each additional fire	3.00
Boarding and lodging houses and furnished rooms, per room	1.00
Boarding schools, per room	1.00
38 Butcher shops, engines and boilers extra	7.00 to 15.00
Dental office	6.00 to 10.00
Drug stores	10.00 to 25.00
Dwelling-houses, 5 rooms or less for family	6.00
Dwelling-houses, each additional room	1.00
Eating-houses	10.00 to 25.00

Fountains flowing not exceeding 3 hours per day during the season from 1st of April to 1st November, one-sixteenth orifice	8.00
Fountains, one eight-jet for the season as above	10.00
Hose for sprinkling streets, including washing and sprinkling sidewalks, the outside of buildings, per lineal front foot; business houses, per season of 6 months	15.00
Same as foregoing, private houses, per front foot	10.00
Hose for sprinkling lawns, 66 feet frontage	5.00
Hose for sprinkling lawns, each front foot in excess of 66 feet	.05
Hotels, per room	1.00
Livery, sale, and feed stables, per single stall, including carriage-washing	3.50
Private stable, 1 horse, including carriage-washing	3.00
Private stables, each additional animal	1.50
Stores not specified otherwise, 22 feet front, first floor	7.00
Stores, each additional floor	3.50
Stores, each additional front foot	.50
Urinals *and* hotels, boarding-houses	6.00
Urinals in blocks, mfg. establishments	4.00
Urinals in stores, banks, and offices	3.00
39 Urinals in private houses	3.00

Urinals with constant flow, special rates.

Wash-basins, stationary, first basin in private family free; all other, each	3.00
Water-closets, per bowl	3.00
Water-closets, public, per bowl	5.00

Yard hydrants at dwelling or boarding-house rates.

All persons not satisfied at the schedule rates can have the privelege of putting in a water meter at their own expense.

Meter Rates.

Less than 300 gals. per day, per 100 gals	.050
300–400 gals. per day, per 100 gals	.045
400–1,000 " " " " " "	.040
1,000–3,000 " " " " " "	.035
3,000–5,000 " " " " " "	.030
5,000 gals. and upwards, per 100 gals	.025
10,00– " " " " " "	.020

Rates for all other purposes that may be applied for, not named in the foregoing schedule of maximum rates, will be fixed by estimation or meter, at the option of the grantee or assigns.

Of all of which the petitioner then and there had notices, and the defendant says that the said premises in said petitione referred to are the same premises hereinbefore described, and that thereupon this defendant accepted the said application and caused and permitted the said main to be tapped and the said connection to be

made therewith for a supply of water to said premises, and
40 that the said petitioner thereupon paid to this defendant the regular rates prescribed by the said rules and regulations for the use of a supply of water to said dwelling-house and premises for the period beginning May 1, 1897, and ending Nov. 1, 1897, being the sum of — dollars.

This defendant avers and insists that by reason of the premises a contract between the said petitioner and the defendant was made and entered into with respect to a supply of water by the defendant to the petitioner for the said premises and dwelling-house during such time and for so long a time as the petitioner should desire the said water to be so supplied; that the petitioner is entitled to have a supply of water to himself and to the said premises and dwelling-house continued upon the terms and conditions of the said contract and not otherwise; and this defendant avers that it has been at all times ready and willing and still is ready and willing to supply water to said premises upon the terms prescribed in and by the said contract, of which the petitioner then and there had notice; but that to comply with the contract on his part, and to pay the sums of money in and by said contract and the said rules and regulations called for and required, the said petitioner neglects and refuses, and that it is solely by reason of such neglect and refusal on the part of the petitioner that the supply of water has been discontinued and cut off from the said premises by the defendant. Wherefore the defendant says that the petitioner is deprived of the said supply of water solely by reason of his own wrong; and this the defendant is ready to verify. Wherefore it prays judgment, etc.

ROGERS PARK WATER COMPANY,
By N. A. PARTRIDGE,
PARTRIDGE & PARTRIDGE,
Its Attorneys.

41 And afterwards, to wit, on the 14th day of January, A. D. 1898, a certain plea or traverse of petitioner was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss.:
Cook County, }

Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Mandamus.

And now comes said petitioner, by Jesse B. Barton, his attorney, and, as to the answer of the said defendant filed herein, says:

That he is ready to aver, maintain, and prove the allegations of his said petition as to the height of the dwelling-house in his said petition described and as to the vario s appliances and fixtures therein.

And petitioner denies that the board of trustees of the said village of Rogers Park on the 12th day of November, 1888, or at any other time, passed an ordinance in the said answer described or any other ordinance of like tenor or effect, and says that the journal of the proceedings of said board of trustees of said village of Rogers Park at a meeting of said board of trustees held on the 12th day of November, 1888, shows that neither said ordinance nor any other ordinance of like tenor or effect was passed at said meeting by said board of trustees.

42 And petitioner admits that on or about January 8th, 1889, there was filed with the clerk of said village a certain instrument in writing substantially as set forth in said answer and purporting to be signed and sealed by one H. E. Keeler.

That petitioner has no knowledge of any assignment from said Keeler to said defendant January 31, 1889, or at any other time, but denies that by such assignment or by any assignment said defendant became possessed of any rights, benefits, or privileges, franchises, or immunities alleged to have been granted to said Keeler by said board of trustees, as in said answer set forth.

And this petitioner denies that any contract ever existed between said defendant and said village of Rogers Park or ever existed or now exists between said defendant and the city of Chicago by reason of the said alleged ordinance or concerning anything therein contained.

And petitioner denies that the maximum water rates or charges due on said dwelling-house so occupied by petitioner, if uniform and equal in every particular with those charged by the city of Chicago for a water supply from the *the* Chicago city water works for the half year from November 1st, 1897, to May 1st, 1898, if paid on or before December 15th, would amount to more than the sum of $8.72, and denies that the ordinance passed by the city council of the city of Chicago October 4th, 1897, as alleged in said petition, was illegal or invalid.

And petitioner denies that his refusal to pay defendant the sum demanded of him by it for a supply of water to said dwelling-house was wrongful.

43 And as to the further and separate answer of said defendant herein petitioner says that he admits that on or about May 17th, 1897, he signed the said application in the said further and separate answer of said defendant described, and delivered the same to said defendant, but denies that on said 17th day of May, 1897, or at any time thereafter, the rules or regulations of said defendants prescribed the water rates in said further and separate answer set forth, or any other water rates, and submits that even if such rules and regulations did prescribe water rates, the same are not now in force, but have been superseded by force and virtue of said ordinance passed by the said city council of the city of Chicago October 4th, 1897.

And this petitioner denies that by reason of the signing of said application or otherwise a contract was made and entered into with respect to a supply of water by the defendant to petitioner for the

said premises and dwelling-house during any period extending beyond November 1st, 1897; and petitioner submits that if any contract ever did exist between this petitioner and said defendant, the said defendant did, in and by its action in cutting off the supply of water to said premises prior to the filing of the petition herein and on or about the 10th day of December, 1897, elect to consider as terminated, rescinded, and canceled any and all contractual relations that might have heretofore existed in relation to said supply of water between petitioner and defendant.

Whereupon petitioner says that nothing in said answer or said further and separate answer contained ought to bar him
44 from the relief by him prayed in and by his original petition herein.

JOHN B. FERGUS, *Petitioner*,
By JESSE B. BARTON,
His Attorney.

JESSE B. BARTON,
Petitioner's Attorney.

And afterwards, to wit, on the 22nd day of January, A. D. 1898, a certain demurrer was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

And the defendant, The Rogers Park Water Company, by Partridge & Partridge, its attorneys, as to the matters and things contained in the several pleas of the petitioner to the matters and things contained in the answer of this defendant to the said petition of John B. Fergus, heretofore filed herein, says:

That the matters and things in the first plea by said petitioner above pleaded are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply unto the same, because the said plea does not tender an issue, nor
45 does the same conclude to the country. Wherefore this defendant demurs to the said plea and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the matters and things by said petitioner secondly above pleaded this defendant says that the same are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply thereunto, because the said plea does not tender an issue of fact and does not conclude to the country in

manner and form as requested by law. Wherefore this defendant demurs to the said second plea and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the matters and things by the petitioner fourthly above pleaded this defendant says that the same are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply thereunto. Wherefore the defendant demurs to the said fourth plea and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the matters and things by the petitioner fifthly above pleaded this defendant says that the same are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply thereunto, because the said plea
46 tenders an issue of law and the same is not in the form required by law for a demurrer, nor does the same purport to admit the facts in the said answer contained for the purposing of raising an issue of law by demurrer. Wherefore the defendant demurs to the said plea and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the matters and things in the said plea by the petitioner sixthly above pleaded this defendant says that the same are not sufficient in law, in manner and form as the same are therein set forth, to require the defendant to reply thereunto, because the said plea is double in this, that the first part of the said plea, relating to the amount of maximum water rates or charges due on the said dwelling-house, tenders an issue of fact, and the latter part of said plea, alleging that the said ordinance of the city of Chicago of October 4th, 1897, is not illegal, tenders and issue of law; and, further, because the said plea is not in proper form to tender an issue of fact nor in the form of a demurrer to tender an issue of law, and that the said plea is in other respects informal and insufficient. Wherefore the defendants demurs to the same and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the matters and things contained in the said
47 plea by the petitioner seventhly above pleaded this defendant says that the said plea and the matters and things therein contained are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply thereunto. Wherefore the defendant demurs to the said plea and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the matters and things in the said plea contained by the petitioner first above pleaded to the second answer of this defendant the defendant says that the matters and things in said plea contained are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply thereunto, because the said plea is double in this, that the said plea in the first portion thereof denies that the rules and regulations of the defendant prescribed the water rates therein referred to, and thereby tenders an issue of fact, while the latter part of the said plea, in which the petitioner alleges that the said rules and regulations are not now in force, tenders and issue of law; and, further, because the said plea is not in manner and form sufficient to tender an issue of fact, nor does the same set forth and allege the said matters and things in the form required by a demurrer to tender an issue of law, and that the said plea is in other respects informal and insufficient. Wherefore the defendant demurs to the same and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

48 And as to the matters and things in the said plea contained by the petitioner secondly above pleaded to the second answer of this defendant the defendant says that the matters and things in said plea contained are not sufficient in law, in manner and form as the same are therein set forth, to require this defendant to reply thereunto, because the first part of said plea, which denies that a contract was made between the petitioner and the defendant with respect to the supply of water by the defendant to the petitioner, as therein set forth, tenders an issue of law with respect to the legal effect of the matters and things in said answer alleged respecting the said application and supply of water, but the same is not in form of a demurrer to tender an issue of law; that the latter portion of said plea, which alleges that if any contract had existed between the petitioner and this defendant that the legal effect of cutting off the said supply of water was to terminate the said contract, in like manner tenders an issue of law in regard to other, distinct, and seperate matters involved in the said answer; and, further, that the same is not in form of a demurrer to tender an issue of law. Wherefore the defendant says that the said plea is double, informal, and insufficient, and the defendant demurs thereto and prays judgment thereof, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

49 And afterwards, to wit, on the 28th day of January, A. D. 1898, a certain amended answer was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

Answer.

Now comes the defendant, The Rogers Park Water Company, a corporation, etc., by Partridge & Partridge, its attorneys, and makes answer unto the said petition heretofore filed in the above-entitled cause, and, answering, says:

1st Ans. This defendant admits that said petitioner, John B. Fergus, at the time of the filing of said petition was and still is the occupant of said premises in said petition described, and that he resides in the dwelling-house in said petition referred to, but this defendant denies that said house is no more than two stories in height, and denies that said petition truly sets forth the various appliances and fixtures in said house and on said premises for the supply of water to the inhabitants thereof.

This defendant admits that said premises are situated in that part of the city of Chicago which was formerly the village of Rogers Park; that the said village, during the time in said petition named, was a municipal corporation, as therein set forth; that said village on or about the 4th day of April, 1893, became annexed to, ever since has been, and still is a part of the city of Chicago, which is a municipal corporation, as set forth in said petition.

Further answering, this defendant alleges that on and before the said 12th day of November, A. D. 1888, the said village of Rogers Park was desirous of obtaining a supply of water for public use in the manner and form by statute provided, and that thereupon, for the purpose of obtaining a supply of water for public use, the board of trustees of the said village of Rogers Park on said 12th day of November, 1888, passed a certain ordinance; which ordinance was on the same day duly approved by the president of said village of Rogers Park, and which ordinance is entitled and is in substance as follows:

An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works.

Be it ordained by the board of trustees of the village of Rogers Park, Cook county, Ill.

SECTION 1. That in consideration of the public benefit to be derived therefrom, the village of Rogers Park Ill., hereby grants the

exclusive right and privilege for a period of thirty years from the time that this ordinance takes effect unto H. E. Keeler, his
51 successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and the said village hereby grants the exclusive right of using the streets, alleys, public squares and all other public places within the corporate limits of said village as they now exist, or may hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for furnishing, storing and conducting an adequate supply of good wholesome, clear water to the said village and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said grantee, his successors and assigns, shall exercise care and diligence in the use of the said streets and alleys, public squares and other public places, and shall cause no unnecessary obstruction of, or interruption of the public travel over or upon same or any injury to, or interference with any pipes mains or sewers which may be now lawfully located beneath the surface thereof.

The said grantee, his successors and assigns, shall take due precaution to provide against danger to life and limb by reason of the exercise of their rights and privileges, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purpose, for which said streets,
52 alleys, public squares and other public places may be used, they shall be restored to their former condition as near as may be without unnecessary delay.

The said grantee, his successors and assigns, hereby agree to hold the said village harmless from liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the system of said water works shall be as follo-s: same to be subject to approval of the village board of trustees.

Mains.—These shall be ample in size to supply water to meet the demands for water, for fire and domestic purposes and shall vary in diameter from 12 inches to 4 inches.

They shall be of the best quality of cast-iron pipes and will be tested at the foundry to a pressure of three hundred (300) pounds to the square inch, and shall be tested after the works are completed to a pressure of 125 pounds per square inch, as shown by a guage attached to a hydrant near the Chicago & Northwestern Railroad depot, and remain tight under said pressure, provided that no single length of four-inch main longer than eight hundred (800) — shall be constructed and laid.

Hydrants.—These shall be of the best kind and quality manufactured, shall be provided with two hose nozzles and shall be frost-proof. They shall be strong enough to stand the same test as those provided for the mains. The grantee, or assigns, shall furnish at

their expense sixty hydrants with their branch castings and
53 connections and located in such places upon the first five miles of mains as the trustees may direct. Said location to be made within thirty days after the acceptance of this ordinance, and if the village shall at any time in the future elect to place intermediate hydrants on the said first five miles of mains such hydrants shall be placed by the grantee or assigns at the expense of the village, and the village shall pay the necessary expense of keeping them in order, but shall pay no rent therefor. Those furnished and located at the time the mains are laid shall be erected and connected with the mains by the grantee or assigns. Those furnished and located thereafter shall be erected and connected with the mains by the grantee or assigns, but the cost thereof shall be paid by the village of Rogers Park. Said hydrants shall be under the sole charge, for said village, of the chief of the fire department, and all repairs and damages except those caused by ordinary wear and tear shall be repaired by said grantee or assigns, and the actual cost of such repairs shall be paid by said village.

Gates and valves.—These shall be of the best quality, and shall stand successfully the test prescribed for the mains.

Pumps.—The pumping machinery used shall be one compound and one high-pressure duplex pumping engine, and shall at the outset have a capacity sufficient for fulfilling the terms and conditions of this ordinance, same to be of not less than 1,500,000 gallons capacity in 24 hours, and shall have boilers of capacity to furnish sufficient steam for them when running at full speed.

54 It and its appurtenances shall be of the best make, strong and durable.

It will be kept in good working order at all times, saving untime to time as the needs of the village may require.

It will be so arranged that the connection with a stand-pipe may avoidable accidents, and its total capacity shall be increased from be closed instantly and that it will pump directly into the mains.

Stand-pipe.—This shall be built of steel and shall be not less than 12 feet in diameter. Its top shall be not less than 100 feet above the elevation of the ground in front of the C. & N. W. R. R. depot in said village of Rogers Park. It shall at all times be kept as nearly full as practical.

SECTION —. In consideration of the public benefits and the protection to property resulting from the construction of the said system of water works, the said village hereby agrees to pay an annual rental for fire protection to the said grantee, his successors or assigns, for not less than five miles of mains within the corporate limits of said village, for the aforesaid period of thirty years, at the annual rate of five hundred and seventy-five ($575) dollars for each mile of mains, to be payable semi-annually on the first day of January and July in each year. In further consideration, the village of Rogers Park agrees to pay all municipal or village taxes which may be assessed against the plant of the said grantee, — assigns for the first ten years the water works are operated. The rental

for fire protection of mains in excess of the first five miles
55 laid, as hereinafter provided, at the request of the said village shall be at the annual rate of four hundred dollars for each mile of mains, payable as aforesaid during the unexpired period of the said original term of thirty years. The rental shall begin at such time as the said grantee or assigns shall begin to maintain continuously a pressure of 40 pounds a square inch. Water shall be used from the hydrants for the extinguishment of fires, and for flushing sewers only. In flushing sewers automatic devices may be used and so regulated that they shall not discharge more than 60 gallons each per day, and that there shall be not more than ten for each mile of mains, and the same shall always be kept in working condition by the village and all waste of water prevented. The village shall have also the right to use water from all the public hydrants during the full term and continuance of this franchise and contract for the purpose of flushing public sewers and gutters whenever the said village shall deem it necessary for sanitary purposes, upon giving notice to said grantee or assigns at the pumping station. Said flushing to be done by the village through hose and fire nozzle only, but there shall not be more than two hydrants open at one time for such purpose, and no one hydrant shall be opened oftener than twice a week and not longer than twenty minutes at one time for such purpose and there shall be no flushing in the time of fire. The village shall use the water provided in all of above cases in a reasonable manner and without unnecessary waste. Said grantee, his successors and assigns, hereby agree to furnish, without additional charge, in consideration of franchise and rentals, hereby agreed to be paid by said village, water sufficient to supply
56 two public drinking fountains for the use of man and beast. The supply of each shall not be larger than one-half inch in diameter, to be constructed at such places in said village as said village board may direct. Also one jet fountain of not to exceed ⅛-inch orifice in each of the public parks of said village; also water sufficient to supply each of the public schools in said village, and also at the public offices of said village, and for the use of the fire department at the engine-house of said village. The said village agrees to furnish said fountains, faucets, etc., and furnish all material and pay the expenses of connecting same with the mains of grantee or assigns, and to use every precaution to prevent all waste of water.

SECTION 4. Said grantee, his successors and assigns, in consideration of the rentals herein agreed to be paid and in consideration of the rights and privileges granted, expressly agrees on its part to furnish to said village of Rogers Park, and to the residents thereof, an adequate supply of good, wholesome and clear water fit for culinary and drinking purposes; said water to be taken from Lake Michigan at such a point near the north boundary line of said village as will best insure its freedom from sewerage contamination, and it shall be filtered by the most modern and by an acceptable process before being delivered into the mains for supply-

ing said village, and if said grantee, his successors and assigns, shall fail at any time to furnish a supply of water to the said village and the residents thereof, of the quality and quantity provided for in
57 this ordinance, then all rentals to be paid by said village to said grantee or assigns shall cease until said grantee or assigns shall provide and supply water of the degree of purity and in the quantity provided for in this ordinance; and also provided that should said grantee or assigns fail to supply water of the quality and quantity and in the manner aforesaid to said village and its inhabitants for a greater length of time than one year at any one time, and after having been given due notification by said village that the authorities of said village consider the supply of water, either in quality or quantity, not in compliance with this ordinance, then the said grantee or assigns shall forfeit and surrender to said village its said franchise and all other rights and privileges granted under this ordinance, and the contract herein entered into shall be null and void. Said grantee or assigns further agrees to furnish such steam as may be needed for running one or more air-compressors to be furnished by said village and located in the pumping station of said grantee or assigns; the total power used by said air-compressors shall *be* at the outset not exceed ten-horse power. All power in excess of that above provided, which said village may need for running air-compressors, shall be furnished by said grantee or assigns at a cost of seventy-five dollars per horse-power per annum.

SECTION 5. Upon the completion of the construction of the said system of water works, the said grantee or assigns shall notify the board of trustees of said village to that effect and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw water through 100 feet of 2½-inch hose and one-inch nozzle from each of six different hydrants not located
58 on the same main to a height of 90 feet above the level of the ground at the C. & N. W. R. R. depot when the air is still. The performance of this test shall be a fulfillment by the grantee or assigns of the terms and conditions of this ordinance so far as relates to strength and capacity. Said grantee and assigns shall so maintain and enlarge said water works that they will at all times be capable of performing such tests, and said village board shall have the right to order a repetition of such tests annually by giving said grantee or assigns a written notice of thirty days, and a failure on the part of said grantee or assigns to make such test shall cause a suspension of said rental until said grantee successfully performs such test.

SECTION 6. Within sixty days after the day this ordinance takes effect, the said grantee or assigns shall file a written acceptance thereof in the office of the village clerk and at least $5,000 work and material on said works shall be done and furnished before December 31, 1888. The construction of said water works shall be commenced within sixty days after this ordinance takes effect, and the said water works shall be completed within one year after the commencement of the construction thereof, provided, however, that the time during which said grantee or assigns are

delayed by strikes, floods, act of God, or the public enemy, legal proceedings for the maintenance or defense of their rights or in the acquisition of property, water rights, right of way, mutinous interference or by reason of any other cause whatever beyond its control, shall form no part of the time limited in this ordinance for
59 the performance of any act required by the terms hereof to be done by them.

SECTION 7. The said village board of trustees shall, from time to time pass and enact ordinances, under suitable penalties, providing for the protection of said works from damage fraud or imposition.

SECTION 8. At the expiration of ten years after the completion of the said works, and at the expiration of each succeeding period of five years thereafter, the said village shall have the right and privelege to purchase said system of water works, provided they notify the said grantee or assigns of their intention so to do at least six months before the expiration of said period or period- of years. The value of said system shall be ascertained as follows: The said grantee or assigns and the said village shall each appoint one person, and the two appointees shall choose a third, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. In case the two experts chosen disagree upon the selection of the third he shall be appointed by the judge of the circuit court of some adjoining circuit. None of the board shall be residents of the village of Rogers Park, Ill. The said board in fixing the value of said works shall take into consideration the value of the franchise, the value of water rights, and right of way, the revenue from the works and all other facts and considerations legitimately connected with the said works. The said village shall within sixty days after the said board has rendered its decision pay the amount awarded in cash, and upon
60 such payments said grantee or assigns shall transfer to the said village all their said rights and priveleges and property included *to* the said appraisement.

SECTION 9. The said grantee or assigns shall make extension of mains whenever called upon to do so by the village board of said village, provided however that said extensions shall be not less than 500 feet in length, and further provided that there shall be one water-consumer for each 100 feet along the line of such extension who shall agree to take water at the established rates for a period of at least two years, but as a condition of making such extension the village agrees to pay for public fire service upon such extension at the rate of four hundred dollars per annum for each mile of such extension for the unexpired term of this franchise and contract.

SECTION 10. After the said works are put in operation, if at any time, the said grantee or assigns are unable to provide a fire pressure of 60 pounds on the distributing mains at the said C. & N. W. R. R. depot for a period of two weeks in succession then the rental for the use and employment of the mains for the purpose aforesaid shall cease until such standard of pressure shall be attained. Nothing herein contained shall be so construed as to prevent

the said grantee or assigns from temporarily shutting off the water from its system or any portion thereof, for the purpose of making repairs or extensions to the same, and no liability shall attach to the said grantee or assigns for the suspension of the supply of water, provided the repairs or extensions are made and the water turned on again without unnecessary delay.

61 SECTION 11. The said grantee or assigns shall have the right to make, alter, amend and enforce rules for governing the connections with their mains, and the use of the water and for preventing the waste of water.

SECTION 12. The said grantee or assigns shall charge the following annual water rates to consumers of water during the existence of this franchise, and they shall have the right at any time to insert a water meter into the service pipe of any consumer and to charge and collect from him at meter rates, provided that in such case the minimum annual rate paid by any one consumer shall be five dollars.

Tariff of Water Rates.

Barber shop, first chair	$5.00
Barber shop, each additional chair	3.00
Bath-house, public, each	7.00 to 15.00
Bath, private, each tub	3.00
Bath, boarding-house, each tub	5.00
Blacksmith shop, one fire	4.00
Blacksmith shop, each additional fire	3.00
Boarding and lodging houses and furnished rooms per room	1.00
Boarding schools, per room	1.00
Butcher shops, engines and boilers extra	7.00 to 15.00
Dental office	6.00 to 10.00
Drug storse	10.00 to 25.00
Dwelling-houses, 5 rooms or less for family	6.00
Dwelling-houses, each additional room	1.00
Eating-houses	10.00 to 25.00
Fountains flowing not exceeding three hours per day during the season from April 1st to November 1st, one-sixteenth oriface	8.00
62 Fountains, one eight-jet for the season as above	10.00
Hose for sprinkling streets, including washing and sprinkling sidewalks, the outsides of buildings per lineal front foot, business houses per season of 6 months	15.00
Same as foregoing private house per front foot	10.00
Hose for sprinkling lawns, 66 feet frontage	5.00
Hose for sprinkling lawns, each front foot in excess of 66 feet	.05
Hotels per room	1.00
Livery, sale and feed stables, per single stall including carriage-washing	3.50
Private stable, 1 horse including carriage-washing	3.00
Private stables, each additional animal	1.50

Stores not otherwise specified, 22 feet front first floor	7.00
Stores, each additional floor	3.50
Stores, each additional front foot	.50
Urinals and hotels, boarding-houses	6.00
Urinals in blocks, mfg. establishments	4.00
Urinals in stores, banks and offices	3.00
Urinals in private houses	3.00

Urinals with constant flow, special rates.

Wash-basins, stationary, first basin in private family free, all others each	3.00
Water-closets, per bowl	3.00
Wate closets, public, per bowl	5.00

Yard hydrants at dwelling or boarding-house rates.

All persons not satisfied at the schedule rates can have the privelege of putting in a water meter at their own expense.

63 *Meter Rates.*

Less than 300 gals. per day, per 100 gals	.050
300–400 gals. per day per 100 gals	.045
400–1,000 " " " " " "	.040
1,000–3,000 " " " " " "	.035
3,000–5,000 " " " " " "	.030
5,000 gals. and upwards per 100 gals	.025
10,00– " " " " " "	.020

Rates for all other purposes that may be applied for not named in the foregoing schedule of maximum rates will be fixed by estimation or meter, at the option of the grantee or assigns.

SECTION 13. A sufficient tax shall be levied and collected annually upon all taxable property in the village subject by law to such taxation to meet the payments under this ordinance as they may respectively mature, during the existence of any contract for public fire service, which tax shall be irrepealable from and after the passage of this ordinance, and in case the village shall be authorized to levy a special tax for such purpose, such tax shall be annually levied and the proceeds thereof shall be kept as a separate fund to be known as a fire-hydrant fund, and shall be irrevocably and exclusively devoted to the payment of hydrant rentals under this ordinance and shall not be otherwise employed except that any excess of said tax in any one year over the amount necessary to pay rentals for such year may be used for any purpose that the village of Rogers Park may direct.

SECTION 14. Within 60 days after the passage of this ordinance said H. E. Keeler, his successors or assigns shall file with the village an acceptance of the same, which acceptance duly ac-
64 knowledged, before some officer duly authorized to administer oaths shall have the effect of a contract between the village and said H. E. Keeler, his successors or assigns.

Approved Nov. 12, A. D. 1888.

HENRY P. DALY,
President Board of Trustees.

Passed Nov. 12, A. D. 1888.

JOHN L. HEALY,
Village Clerk.

Further answering, this defendant says that on or about the 8th day of January, 1889, said H. E. Keeler, the grantee under said ordinance, presented to the said board of trustees and filed with the clerk of said village his acceptance of the said ordinance, and which acceptance was in substance as follows:

"CHICAGO, *Jan.* 8, 1889.

To the board of trustees, village of Rogers Park, Ill.

DEAR SIRS: I hereby accept, as per section 14, the ordinance passed and approved Nov. 12th, 1888—'An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase said works.'

Yours respectfully, H. E. KEELER. [SEAL.]

65 STATE OF ILLINOIS, } ss.
County of Cook, }

I, Louis Danziger, a notary public in and for said county, in the State aforesaid, do hereby certify that H. E. Keeler, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this ninth day of January, 1889.

LOUIS DANZIGER,
[SEAL.] *Notary Public.*"

This defendant further admits that it is a corporation duly incorporated on or about the 24th day of January, 1889, under the statutes of the State of Illinois, having for the object of its incorporation, among other things, to locate, construct, and operate a system of water works, with all appliances for pumping and distributing water, in the village of Rogers Park, in said Cook county and State of Illinois, and its vicinity, and to own real estate used in connection therewith.

Further answering, this defendant alleges that on or about the 31st day of January, 1889, the said H. E Keeler, the grantee named in said ordinance passed on the 12th day of November, 1888, by the board of trustees of said village of Rogers Park, duly as-
66 signed his rights and priveleges under the said ordinance to this defendant, and that thereupon it became possessed of all of the rights, benefits, and priveleges, franchises, and immunities granted by or contained in the said ordinance or belonging to or in

anywise growing out of the same, as assigned by said grantee, and that this defendant has ever since been and now is so possessed.

This defendant admits that in pursuance of the said object of its incorporation this defendant did, soon after its incorporation, erect, construct, and put in operation a system of water works, with all appliances for pumping and distributing water, in said village of Rogers Park, including water mains and supply pipes in the public streets of said village, and in that part of the city of Chicago which was formerly the village of Rogers Park, and this defendant alleges that each and all of said acts and things were done by the authority and virtue of the said ordinance hereinabove set forth and not otherwise, and this defendant alleges and insists that thereupon and by virtue of the passage of the said ordinance and the acceptance by the said grantee therein named and the said assignment and acceptance thereof by this defendant that the said ordinance, together with the rights, privileges, benefits, and immunities therein and thereby granted, became and constituted a contract between this defendant and the said village of Rogers Park and the city of Chicago.

This defendant admits that on or about the 9th day of May, 1897, it laid a certain water pipe or main in said street called the Sheridan road or drive and in front of the said premises occupied by said petitioner and in said petition described, and that said
67 water main is part of the system of pipes for the distribution of water operated by this defendant and is connected with its pumping station; that said water main is connected by a supply pipe with the appliances and fixtures contained in said dwelling-house for the purpose of supplying water to the occupants thereof, and that there is set in said supply pipe a cock for the purpose of letting on and shutting off the water between the said main and the said dwelling-house.

This defendant admits that on or before October 4th, 1897, and ever since that time there has been in force in the city of Chicago aforesaid an ordinance establishing the maximum water rates charged by the city of Chicago for water supplied from the Chicago city water works, whereby the maximum water rates per annum for dwelling-houses are fixed substantially as in said petition set forth, but this defendant denies that the maximum water rates or charges due on said dwelling-house so occupied by said petitioner, if uniform and equal in every particular with those charged by the city of Chicago for a supply of water from the Chicago city water works for the year from November 1st, 1897, to May 1st, 1898, if paid on or before December 15th, would amount to the sum of eight dollars and $\frac{72}{100}$th- ($8.72); but, on the contrary thereof, this defendant alleges that the amount of said rates would exceed the said sum by a large amount.

Further answering, this defendant denies that on October 4th, 1897, or on any other day the city council of the city of Chicago passed any legal and valid ordinance, in which it was ordained that the maximum rates and charges for a supply of water fur-
68 nished by this defendant to the inhabitants of that part of the city of Chicago in which this defendant had been or

might be authorized to lay water mains and supply pipes were established or fixed so as to be uniform and equal with those charged by the city of Chicago for water supply from the Chicago city water works; and this defendant alleges and insists that if any such supposed ordinance was pretended to be so passed, as alleged in said petition, that such ordinance was void, illegal, and of no effect, because the said ordinance and contract hereinbefore set forth was then a valid and subsisting contract between the city of Chicago and this defendant, and the said city of Chicago and the council thereof were without any right, power, or authority to change the terms of the said ordinance and contract, which fixed a rate to be charged by this defendant to the inhabitants of that part of the city of Chicago formerly comprised in said village of Rogers Park and including the premises in said petition set forth; and this defendant alleges and insists that by reason of the premises the said supposed ordinance was and is utterly void, without any force, effect, or legal authority whatever.

This defendant admits that the petitioner did, on or about the 11th day of December, A. D. 1897, tender to this defendant the said sum of eight dollars and $\frac{72}{100}$ths ($8.72), and requested and demanded that this defendant turn the water from its said water main in said Sheridan road or drive into the supply pipe leading to said dwelling-house so as to supply water to the petitioner; and this defendant admits that it demanded of said petitioner that he pay to it the amount of money so fixed and established by the said ordi-
69 nance and contract then existing and in full force and validity, as above set forth, between this defendant and the city of Chicago, of all of which the petitioner then and there had notice, but that to pay the said sum the petitioner then and there refused. Wherefore, for want of a sufficient tender and payment in that behalf, this defendant refused to turn on the said water and to supply the petitioner therewith; and this defendant says that the petitioner is deprived of the said water by means of his own wrongful neglect and refusal to pay to this defendant the amount of its just, reasonable, and lawful charges in that behalf, and not otherwise; and this the defendant is ready to verify. Wherefore it prays that the said petition may be dismissed, and that it may go thereof without day, and may recover its costs and charges in this behalf by it most wrongfully expended.

ROGERS PARK WATER COMPANY,
By PARTRIDGE & PARTRIDGE,
Its Attorneys.

2 Ans. And for a further answer in this behalf the defendant says that the said petitioner ought not to have or maintain his aforesaid petition against this defendant, because it says that before the time when, etc., and after the said water main or pipe had been laid and constructed in front of the said premises in Sheridan road or drive, in said city of Chicago, and, to wit, on or about the 17th day of May, 1897, in said county, the said petitioner represented and stated

himself to be the owner of said premises and applied to the
70 defendant and requested it to permit an opening or tap to be made and placed in the said water main and a connecting pipe to be laid between the said water main and the fixtures for the use of water contained in said premises and dwelling-house; and thereupon said petitioner made a written application to this defendant for the purpose aforesaid, which application was thereupon accepted by the defendant and which application and acceptance thereof constituted a contract between the said petitioner and this defendant, and which application then and there was made, executed, and delivered by the petitioner to the defendant, and which application was in writing and was in substance as follows:

APPLICATION No. 681.

Application for a Supply of Water.

ROGERS PARK, ILL., *May* 17, 1897.

To superintendent Rogers Park Water Company:

I, the undersigned, hereby request and contract for a supply of water from the company's mains to premises known as lot 7, block 9, No. 3229 Sheridan road, located on the west side of Sheridan road, between Devon and Albion Ave., in said village, for use and from fixtures as enumerated on the margin hereof; said water to be supplied subject to the rules and regulations of said company now in force or which may hereafter be enacted or adopted, which rules and regulations are hereby made and declared to be a part of the contract between me and said company for supplying said premises with water.

J. B. FERGUS, *Owner.*

1 tap, 1 street washer or sill cock, 3 basins, 1 bath-tub, 2 water-closets, 11 rooms, 100 feet front lawn.

71 And this defendant says that before and at the time of the said application the water rates prescribed by said rules and regulations to be paid by the inhabitants of that part of the city of Chicago formerly comprised within said village of Rogers Park and including the said premises were and ever since have been as follows:

Barber shop, first chair	$5.00
Barber shop, each additional chair	3.00
Bath-house, public, each	7.00 to 15.00
Bath, private, each tub	3.00
Bath, boarding-house, each tub	5.00
Blacksmith shop, one fire	4.00
Blacksmith shop, each additional fire	3.00
Boarding and lodging houses and furnished rooms, per room	1.00
Boarding schools, per room	1.00

Butcher shops, engines and boilers extra	7.00 to 15.00
Dental office	6.00 to 10.00
Drug stores	10.00 to 25.00
Dwelling-houses, 5 rooms or less for family	6.00
Dwelling-houses, each additional room	1.00
Eating-houses	10.00 to 25.00
Fountains flowing not exceeding 3 hours per day during the season from 1st of April to 1st November, one-sixteenth orifice	8.00
Fountains, one eight-jet for the season as above	10.00
Hose for sprinkling streets, including washing and sprinkling sidewalks, the outsides of buildings, per lineal front foot; business houses, per season of 6 months	15.00
Same as foregoing, private house, per front foot	10.00
Hose for sprinkling lawn, 66 feet frontage	5.00
Hose for sprinkling lawns, each front foot in excess of 66 feet	.05
Hotels, per room	1.00
Livery, sale, and feed stables, per single stall, including carriage-washing	3.50
Private stable, 1 horse, including carriage-washing	3.00
Private stables, each additional animal	1.50
Stores not specified otherwise, 22 feet front, first floor	7.00
Stores, each additional floor	3.50
Stores, each additional front foot	.50
Urinals *and* hotels, boarding-houses	6.00
Urinals in blocks, mfg. establishments	4.00
Urinals in stores, banks, and offices	3.00
Urinals in private houses	3.00

Urinals with constant flow, special rates.

Wash-basins, stationary, first basin in private family free; all others, each	3.00
Water closets, per bowl	3.00
Water-closets, public, per bowl	5.00

Yard hydrants at dwelling or boarding-house rates.

All persons not satisfied at the schedule rates can have the privelege of putting in a water meter at their own expense.

73 *Meter Rates.*

Less than 300 gals. per day, per 100 gals	.050
300–400 gals. per day, per 100 gals	.045
400–1,000 " " " " " "	.040
1,000–3,000 " " " " " "	.035
3,000–5,000 " " " " " "	.030
5,000 gals. and upwards, per 100 gals	.025
10,000 gals. and upwards, per 100 gals	.020

Rates for all other purposes that may be applied for, not named in the foregoing schedule of maximum rates, will be fixed by esti-

mation or meter, at the option of the grantee or assigns. Of all of which the petitioner then and there had notice, and the defendant says that the said premises in said petition referred to are the same premises hereinabove described, and that thereupon this defendant accepted said application and caused and permitted the said main to be tapped and the said connection to be made therewith for a supply of water to said premises, and that the said petitioner thereupon paid to the defendant the regular rates prescribed by the rules and regulations for the use of a supply of water to said dwelling-house and premises for the period beginning May 1, 1897, and ending Nov. 1, 1897, being the sum of — dollars.

This defendant avers and insists that by reason of the premises a contract between the said petitioner and the defendant was made and entered into with respect to a supply of water by the defendant to the petitioner for the said premises and dwelling-house during such time and for so long a time as the petitioner should *devise* the said water to be so supplied; that the petitioner is entitled
74 to have a supply of water to himself and to the said premises and dwelling-house continued upon the terms and conditions of the said contract and not otherwise; and this defendant avers that it has been at all times ready and willing and still is ready and willing to supply water to said premises upon the terms prescribed in and by said contract, of all of which the petitioner then and there had notice; but that to comply with the *the* said contract on his part, and to pay the sum of money in and by said contract *on his part, and to pay the sum of money in and by said contract*, and the said rules and regulations called for and required the said petitioner neglects and refuses, and that it is solely by reason of such neglect and refusal on the part of the petitioner that the supply of water has been discontinued and cut off from the said premises by the defendant. Wherefore the defendant says that the petitioner is deprived of the said supply of water solely by reason of his own wrong; and this the defendant is ready to verify. Wherefore it prays judgment, etc.

ROGERS PARK WATER COMPANY,
By N. A. PARTRIDGE, *Its Attorneys.*

75 STATE OF ILLINOIS, } ss.:
County of Cook, }

Albert H. Trull, being first duly sworn, on oath says that he is the stenographer in the employ of Partridge & Partridge, attorneys for the defendant in the above-entitled cause, and that he wrote the original answer of said defendant, which was filed January 13th, 1898, to the petition herein, and that the above and foregoing is a full, true, and correct copy thereof; and further affiant saith not.

ALBERT H. TRULL.

Subscribed and sworn to before me this fourth day of February, 1898.

[SEAL.]

LEO W. WHEELER,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

Amended Answer.

3rd Ans. Now comes the defendant, The Rogers Park Water Company, a corporation, etc., by Partridge & Partridge, its
76 attorneys, and by leave of court in that behalf first had and obtained files this its amended answer unto the said petition of John B. Fergus heretofore filed in the above-entitled cause, and by like leave of court *replies* herein as part of its amended answer the answer heretofore filed by said defendant in said cause.

And for a further answer in this behalf to the said petition, by like leave of court, the defendant says that the petitioner ought not to have or maintain his aforesaid action against this defendant, because it says that before the said time when, etc., the said village of Rogers Park, then and there being a municipal corporation under the laws of the State of Illinois, and on or before the said 12th day of November, A. D. 1888, was desirous of obtaining a supply of water for public use, and that the said village was then and there prohibited by law from raising the amount of money by public taxation necessary and requisite to build, equip, and operate the necessary system of water works, with appliances for pumping and distributing water requisite for a water supply for fire protection and for the use of the inhabitants of said village, and thereupon, for the purpose of obtaining a supply of water for public use, as aforesaid, in the manner and form by statute provided, the board of trustees of the said village of Rogers Park before said 12th day of November, 1888, applied to one H. E. Keeler to build, equip, construct, and maintain and operate a system of water works, with all appliances for pumping and distributing water, in said village of Rogers Park, and thereupon and for the purpose aforesaid the said
77 board of trustees of said village of Rogers Park did on the 12th day of November, 1888, pass a certain ordinance; which ordinance was on the same day duly approved in writing by the president of the said village of Rogers Park, and which ordinance is entitled and in substance is as follows:

An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works.

Be it ordained by the board of trustees of the village of Rogers Park, Cook county, Illinois.

SECTION 1. That in consideration of the public benefit to be de-

rived therefrom, the village of Rogers Park, Illinois, hereby grants their exclusive right and privilege for a period of thirty years from the time that this ordinance takes effect unto H. E. Keeler, his successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and the said village hereby grants the exclusive right of using the streets, alleys, public squares and all other public places within the corporate limits of said village as they now exist, or may hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for furnishing, storing and conducting an adequate supply of good wholesome, clear water to the said village and
78 its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said grantee, his successors and assigns, shall exercise care and diligence in the use of the said streets and alleys, public squares and other public places, and shall cause no unnecessary obstruction of, or interruption of the public travel over or upon same or any injury to, or interference with any pipes, mains or sewers which may now be lawfully located beneath the surface thereof.

The said grantee, his successors and assigns, shall take due precaution to provide against danger to life and limb by reason of the exercise of their rights and privileges, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purpose, for which said streets, alleys, public squares and other public places may be used, they shall be restored to their former condition as near as may be without unnecessary delay.

The said grantee, his successors and assigns, hereby agree to hold the said village harmless from liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the system of the said water works shall be as follows: same to be subject to approval of the village board of trustees.

Mains.—These shall be ample in size to supply water to meet the demands for water, for fire and domestic purposes and shall vary in diameter from 12 inches to 4 inches.

79 They shall be of the best quality of cast-iron pipe and will be tested at the foundry to a pressure of three hundred (300) pounds to the square inch, and shall be tested after the works are completed to a pressure of 125 pounds per square inch, as shown by a guage attached to a hydrant near the Chicago & Northwestern Railroad depot, and remain tight under said pressure, provided that no single lenght of four-inch main longer than eight hundred (800) — shall be constructed and laid.

Hydrants.—These shall be of the best kind and quality manufactured shall be provided with two hose nozzles and shall be frost-proof. They shall be strong enough to stand the same test as those provided for the mains. The grantee or assigns shall

furnish at their expense sixty hydrants with their branch castings and connections and located in such places upon the first five miles of mains as the trustees may direct. Said location to be made within thirty days after the acceptance of this ordinance, and if the village shall at any time in the future elect to place intermediate hydrants on the said first five miles of mains such hydrants shall be placed by the grantee or assigns at the expense of the village, and the village shall pay the necessary expense of keeping them in order, but shall pay no rent therefor. Those furnished and located at the time the mains are laid shall be erected and connected with the mains by the grantee or assigns. Those furnished and located thereafter shall be erected and connected with the mains by the grantee or assigns, but the cost thereof shall be paid by the village of Rogers Park. Said hydrants shall be under the sole charge for said village, of the chief of
80 the fire department, and all repairs and damages except those caused by ordinary wear and tear shall be repaired by said grantee or assigns, and the actual cost of said repairs shall be paid by said village.

Gates and valves.—These shall be of the best quality, and shall stand successfully the test prescribed for the mains.

Pumps.—The pumping machinery used shall be one compound and one high-pressure duplex pumping engine, and shall at the outset have a capacity sufficient for fulfilling the terms and conditions of this ordinance, same to be of not less than 1,500,000 gallons capacity in 24 hours, and shall have boilers of capacity to furnish sufficient steam for them when running at full speed. It and its appurtenances shall be of the best make, strong and durable. It will be kept in good working order at all times, saving unavoidable accidents, and its total capacity shall be increased from time to time as the needs of the village may require. It will be so arranged that the connection with stand-pipe may be closed instantly and that it will pump directly into the mains.

Stand-pipe.—This shall be built of steel, and shall be not less than 12 feet in diameter. Its top shall be not less than 100 feet above the elevation of the ground in front of the C. & N. W. R. R. depot in said village of Rogers Park. It shall at all times be kept as nearly full as is practical.

SECTION 3. In consideration of the public benefits and the protection to property resulting from the construction of the said
81 system of water works, the said village hereby agrees to pay an annual rental for fire protection to the said grantee, his successors or assigns, for not less than five miles of mains within the corporate limits of said village, for the aforesaid period of thirty years, at the annual rate of five hundred and seventy-five ($575) dollars for each mile of mains, to be payable semi-annually on the first day of January and July in each year.

In further consideration the village of Rogers Park agrees to pay all municipal or village taxes which may be assessed against the plant of the said grantee, assigns, for the first ten years the water works are operated. The rental for fire protection of mains in excess

of the first five miles laid, as hereinafter provided at the request of the said village shall be at the annual rate of four hundred dollars for each mile of mains, payable as aforesaid during the unexpired period of the said original term of thirty years. The rental shall begin at such time as the said grantee or assigns shall begin to maintain continuously a pressure of 40 pounds a square inch. Water shall be used from the hydrants for the extinguishment of fires, and for flushing sewers only. In flushing sewers automatic devices may be used and so regulated that they shall not discharge more than 60 gallons each per day, and, that there shall not be more than ten for each mile of mains, and the same shall always be kept in working condition by the village and all waste of water prevented. The village shall have also the right to use water from all the public hydrants during the full term and continuance of this franchise and contract for the purpose of flushing public sewers and gutters whenever the said village shall deem it necessary for sanitary purposes, upon giving notice to said grantee or assigns at the pumping station. Said flushing to be done by the village through hose and fire nozzle only, but there shall not be more than two hydrants open at one time for such purpose, and no one hydrant shall be opened oftener than twice a week and not longer than twenty minutes at one time for such purpose, and there shall be no flushing in the time of fire. The village shall use the water provided in all of above cases in a reasonable manner and without unnecessary waste. Said grantee, his successors and assigns hereby agree to furnish without additional charge, in consideration of franchise and rentals, hereby agreed to be paid by said village, water sufficient to supply two public drinking fountains for the use of man and beast. The supply pipe of each shall not be larger than one-half inch in diameter, to be constructed at such places in said village as said village board may direct. Also one jet fountain of not to exceed ½-inch orifice in each of the public parks of said village; also water sufficient to supply each of the public schools in said village, and also at the public offices of said village and for the use of the fire department at the engine-house of said village. The said village agrees to furnish said fountains, faucets, etc., and furnish all material and pay the expenses of connecting same with the mains of grantee or assigns, and to use every precaution to prevent all waste of water.

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83 SECTION 4. Said grantee, his successors and assigns, in consideration of the rentals herein agreed to be paid and in consideration of the rights and privileges granted, expressly agrees on its part to furnish to said village of Rogers Park, and to the residents thereof, an adequate supply of good, wholesome and clear water fit for culinary and drinking purposes; said water to be taken from Lake Michigan at such a point near the north boundary line of said village as will best insure its freedom from sewerage contamination, and it shall be filtered by the most modern and by an acceptable process before being delivered into the mains for supplying said village, and if said grantee, his successors and assigns shall

fail at any time to furnish a supply of water to the said village and the residents thereof, of the quality and quantity provided for in this ordinance, then all rentals to be paid by said village to said grantee or assigns shall cease until said grantee or assigns shall provide and supply water of the degree of purity and in the quantity provided for in this ordinance; and also provided that should said grantee or assigns fail to supply water of the quality and quantity and in the manner aforesaid to said village and its inhabitants for a greater length of time than one year at any one time, and after having been given due notification by said village that the authorities of said village consider the supply of water, either in quality or quantity, not in compliance with this ordinance then the said grantee or assigns shall forfeit and surrender to said village its said franchise and all other rights and privileges granted under this ordinance, and the contract herein entered into shall be null
84 and void. Said grantee or assigns further agrees to furnish such steam as may be needed for running one or more air-compressors to be furnished by said village and located in the pumping station of said grantee or assigns; the total power used by said air-compressors shall be at the outset not to exceed ten-horse power. All power in excess of that above provided which said village may need for running air-compressors, shall be furnished by said grantee or assigns at a cost of seventy-five dollars per horse-power per annum.

SECTION 5. Upon the completion of the construction of the said system of water works, the said grantee or assigns shall notify the board of trustees of said village to that effect and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw water through 100 feet of 2½-inch hose and one-inch nozzle from each of six different hydrants not located on the same main to a height of 90 feet above the level of the ground at the C. & N. W. R. R. depot when the air is still. The performance of this test shall be a fulfillment by the grantee or assigns of the terms and conditions of this ordinance as far as relates to strength and capacity. Said grantee and assigns shall so maintain and enlarge said water works that they will at all times be capable of performing such tests and said village board shall have the right to order a repetition of such tests annually by giving said grantee or assigns a written notice of thirty days, and a failure on the part of said grantee or assigns to make such test shall cause a suspension of said rental until said grantee successfully performs such test.

85 SECTION 6. Within sixty days after the day that this ordinance takes effect, the said grantee or assigns shall file a written acceptance thereof in the office of the village clerk and at least $5,000.00 work and material on said works shall be done and furnished before December 31, 1888. The construction of said water works shall be commenced within 60 days after this ordinance takes effect, and the said water works shall be completed within one year after the commencement of the construction thereof, provided, however, that the time during which said grantee or assigns are

delayed by strikes, floods, act of God, or the public enemy, legal proceedings for the maintenance or defense of their rights or in the acquisition of property water rights, right of way, mutinous interference or by reason of any other cause whatever beyond its control, shall form no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them.

SECTION 7. The said village board of trustees shall from time to time pass an- enact ordinances, under suitable penalties, providing for the protection of said works from damage, fraud or imposition.

SECTION 8. At the expiration of ten years after the completion of the said works, and at the expiration of each succeeding period of five years thereafter, the said village shall have the right and privelege to purchase said system of water works, provided they notify the said grantee or assigns of their intention so to do at least six months before the expiration of said period or periods of years.

86 The value of said system shall be ascertained as follows:

The said grantee or assigns and the said village shall each appoint one person, and the two appointees shall cho-se a third, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. In case the two experts chosen disagree upon the selection of the third he shall be appointed by the judge of the circuit court of some adjoining circuit. None of the board shall be residents of Rogers Park, Ill. The said board in fixing the value of said works shall take into consideration the value of the franchise, the value of water rights and right of way, the revenue from the works and all other facts and considerations legitimately connected with the said works. The said village shall within sixty days after the said board has rendered its decision pay the amount awarded in cash, and upon such payment said grantee or assigns shall transfer to the said village all their said rights and privileges and property included *to* the said appraisement.

SECTION 9. The said grantee or assigns shall make extension of mains, whenever called upon to do so by the village board of said village, provided however, that said extensions shall not be less than 500 feet in length, and further provided that there shall be one water consumer for each 100 feet along the line of such extension

87 who shall agree to take water at the established rates for a period of at least two years, but as a condition of making such extensions the village agrees to pay for public fire service upon such extensions at the rate of four hundred dollars per annum for each mile of such extension for the unexpired term of this franchise and contract.

SECTION 10. After the said works are put in operation if at any time the said grantee or assigns are unable to provide a fire pressure of 60 pounds on the distributing mains at the said C. & N. W. R. R. depot for a period of two weeks in succession, then the rental for the use and employment of the mains for the purpose aforesaid

shall cease until such standard of pressure shall be attained. Nothing herein contained shall be so construed as to prevent the said grantee or assigns from temporarily shutting off the water from its said system or any portion thereof for the purpose of making repairs or extensions to the same, and no liability shall attach to the said grantee or assigns for the suspension of the supply of water, provided the repairs or extensions are made and the water turned on again without unnecessary delay.

SECTION 11. The said grantee or assigns shall have the right to make, alter, amend and enforce rules for governing the connections with their mains, and the use of the water and for preventing the waste of water.

SECTION 12. The said grantee or assigns shall charge the following annual water rates to consumers of water during the
88 existence of this franchise, and they shall have the right at any time to insert a water meter into the service pipe of any consumer and to charge and collect from him at meter rates, provided that in such case the minimum annual rate paid by any one consumer shall be five dollars.

Tariff of Water Rates.

Barber shop, first chair	$5.00
Barber shop, each additional chair	3.00
Bath-house, public, each	7.00 to 15.00
Bath, private, each tub	3.00
Bath, boarding-house, each tub	5.00
Blacksmith shop, one fire	4.00
Blacksmith shop, each additional fire	3.00
Boarding and lodging houses and furnished rooms per room	1.00
Boarding schools, per room	1.00
Butcher shops, engines & boilers extra	7.00 to 15.00
Dental office	6.00 to 10.00
Drug stores	10.00 to 25.00
Dwelling-houses, 5 rooms or less for family	6.00
Dwelling-houses, each additional room	1.00
Eating-houses	10.00 to 25.00
Fountains flowing not exceeding 3 hours per day during the season from 1st of April to 1st November, one-sixteenth orifice	8.00
Fountains, one eight-jet for the season as above	10.00
Hose for sprinkling streets, including washing and sprinkling sidewalks, the outside of buildings per lineal
89 front foot, business house per season of 6 months	15.00
Same as foregoing private house per front foot	10.00
Hose for sprinkling lawns, each front foot in excess of 66 feet	.05
Hotels, per room	1.00
Livery, sale and feed stables, per single stall including carriage-washing	3.50
Private stables, 1 horse including carriage-washing	3.00
Private stables, each additional animal	1.50

Stores not otherwise specified, 22 feet front first floor	7.00
Stores, each additional floor	3.50
Stores, each additional fron- foot	.50
Urinals *and* hotels, boarding-houses	6.00
Urinals in blocks, mfg. establishments	4.00
Urinals in stores, banks and offices	3.00
Urinals in private houses	3.00

Urinals with constant flow, special rates.

Wash-basins, stationary, first basin in private family free, all others each	3.00
Water-closets per bowl	3.00
Water closets, public per bowl	5.00

Yard hydrants at dwelling or boarding-house rates.

All persons not satisfied at the schedule rates can have the privilege of putting in a water meter at their own expense.

90 *Meter Rates.*

Less than 300 gals. per day, per 100 gals	.050
300–400 gals. per day per 100 gals	.045
400–1,000 " " " " " "	.040
1,000–3,000 " " " " " "	.035
3,000–5,000 " " " " " "	.030
5,00– gals. and upwards per 100 gals	.025
10,00– gals. and upwards per 100 gals	.020

Rates for all other purposes that may be applied for not named in the foregoing schedule of maximum rates will be fixed by estimation or meter, at the option of the grantee or assigns.

SECTION 13. A sufficient tax shall be levied and collected annually upon all taxable property in the village subject by law to such taxation to meet the payments under this ordinance as they may respectively mature, during the existence of any contract for public fire service, which tax shall be irrepealable from and after the passage of this ordinance, and in case the village shall be authorized to levy a special tax for such purpose, such tax shall be annually levied and the proceeds thereof shall be kept as a separate fund to be known as a fire-hydrant fund, and shall be irrevocably and exclusively devoted to the payment of hydrant rentals under this ordinance, and shall not be otherwise employed except that any excess of said tax in any one year over the amount necessary to pay rentals for such year may be used for any purpose that — village of Rogers Park may direct.

91 SECTION 14. Within sixty days after the passage of this ordinance said H. E. Keeler, his successors and assigns shall file with the village an acceptance of the same, which acceptance duly acknowledged before some officer duly authorized to administer oaths shall have the effect of a contract between the village and said H. E. Keeler, his successors or assigns.

Approved Nov. 12, A. D. 1888.

HENRY P. DALY,
President Board of Trustees.

Passed Nov. 12, A. D. 1888.

JOHN L. HEALY,
Village Clerk.

And which said ordinance was duly published according to law, so that the same became, was, and is a valid ordinance of the said village of Rogers Park.

That it was well known and understood by the said village of Rogers Park and the said board of trustees thereof that said H. E. Keeler, the grantee under said ordinance, was not possessed of sufficient means to build the said water works out of his own private means, and that the said ordinance was passed to enable the said Keeler to negotiate with other persons on the faith of the said ordinance and all the matters and things therein stipulated, provided, and agreed on the part of the said village, to obtain the necessary capital to build, equip, and operate the said system of water works, and that it was then and there well known by the said village and the board of trustees thereof that the only means to make an
92 investment of capital in the said system of water works profitable, and to repay the investment required to be made in that behalf, was by means and virtue of the rates in said ordinance provided to be paid by said village as hydrants' rental and by the rates to be paid by the inhabitants of said village who applied for and obtained a supply of water from the said water works for domestic use or business purposes, and that the territory comprised in said village was and is mostly a residence district, so that one of the main sources of revenue, it was then well known, would be, and in fact ever since has been, the rates paid by owners and occupants of residences within the said territory for a supply of water for domestic use.

That thereupon said Keeler negotiated with different persons to become stockholders in a corporation to be organized for the purpose of building and operating the said water works in said ordinance provided for, and to purchase the bonds of said company, and that relying upon the rights, benefits, and privileges, franchises, and immunities granted by or contained in the said ordinance, and particularly upon the rates therein provided to be paid by the said village and by the inhabitants thereof for a supply of water, as hereinabove set forth, a large number of persons did associate themselves together for the purpose of forming a corporation known as The Rogers Park Water Company, the present defendant herein, and did negotiate the sale of bonds of said company to provide the means to build, equip, and put in operation the said system of water works, including not less than five miles
93 of mains within the corporate limits of said village; and thereupon the said H. E. Keeler did afterwards, and on or about the 8th day of January, 1889, present to the said board of trustees and file with the clerk of said village his acceptance of the said ordinance, and which acceptance was in substance as follows:

CHICAGO, *Jan.* 8, 1889.

To the board of trustees, village of Rogers Park, Ill.

DEAR SIRS: I hereby accept as per section 14 the ordinance passed and approved Nov. 12th, 1888—An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works.

Yours respectfully, H. E. KEELER. [SEAL.]

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Louis Danziger, a notary public in and for said county, in the State aforesaid, do hereby certify that H. E. Keeler, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

94 Given under my hand and notarial seal this ninth day of January, 1889.

LOUIS DANZIGER,
Notary Public. [SEAL.]

This defendant further admits that it is a corporation duly incorporated on or about the 24th day of January, 1889, under the statutes of the State of Illinois, having for the object of its incorporation, among other things, to locate, construct, and operate a system of water works, with all appliances for pumping and distributing water, in the village of Rogers Park, in said Cook county and State of Illinois, and its vicinity, and to own real estate used in connection therewith.

Further answering, this defendant alleges that on or about the 31st day of January, 1889, the said H. E. Keeler, the grantee named in said ordinance passed on the 12th day of November, 1888, by the board of trustees of said village of Rogers Park, duly assigned his rights and privileges under the said ordinance to this defendant, and that thereupon it became possessed of all the rights and privileges and benefits, franchises, and immunities granted by or contained in the said ordinance or belonging to or in anywise growing out of the same, as assigned by said grantee, and that this defendant has ever since been and now is so possessed.

This defendant admits that in pursuance of the said object of its incorporation this defendant did soon after its incorporation

95 erect, construct, and put in operation a system of water works, with all appliances for pumping and distributing water, in said village of Rogers Park, including water mains and supply pipes in the public streets of said village and in that part of the city of Chicago which was formerly the village of Rogers Park; and this defendant alleges that each and all of said acts and things

were done by the authority of the said ordinance hereinabove set forth, and not otherwise; and this defendant alleges and insists that thereupon, and by virtue of the passage of the said ordinance, and the acceptance by the said grantee therein named, and the said assignment and acceptance thereof by this defendant, that the said ordinance, together with the rights, privileges, benefits, and immunities therein and thereby granted, became and constituted a contract between this defendant and the said village of Rogers Park and the city of Chicago.

That upon the completion of the construction of said system of water works the defendant notified the board of trustees of said village to that effect, and thereupon submitted the said works to the test in and by said ordinance, by section five thereof, provided, and that thereupon the said system of water works was accepted by the said village of Rogers Park, and thereafter and ever since the hydrant rental in said ordinance reserved has been paid by the village of Rogers Park previous to the annexation thereof to the city of Chicago and by the city of Chicago ever since the said annexation, as is in and by said ordinance provided.

That in and by the ninth section of said ordinance it is
96 provided that said grantee or assigns shall make extensions of mains, whenever called upon to do so by the village board of said village, upon the terms and conditions in said ordinance provided, and that from time to time, by virtue of the said provisions requiring extensions to be made, this defendant has extended its lines of mains in said village until now about thirteen miles of additions to said water mains have been made in addition to the five miles originally provided for, so that about eighteen miles of water mains, including extensions belonging to this defendant, are now in operation and service for the supply of water to the territory in the city of Chicago formerly comprised within said village of Rogers Park; that a large part of said extensions have been made by the order of the common council of the city of Chicago, and that the said city of Chicago pays to this defendant the hydrant rentals upon said extensions reserved in and by the said ordinance.

That on or about the 25th day of January, 1897, a certain order was passed by the common council of the city of Chicago, calling upon this defendant to extend a water main in the said street known as the Sheridan road or drive in front of the premises in said petition described; and thereupon, in compliance with said order, this defendant proceeded to lay and extend the said water main, and that the said extension was accepted by the city of Chicago, and hydrant rental has been paid thereon ever since by the city of Chicago, as is in and by the said ordinance provided.

That the petitioner actively interested himself to prevent the said extension from being made, and applied to alderman of the city of Chicago and objected to the passage of said order, and tried
97 to prevent the same from being passed, and protested against the passage of the said order and the laying of the said main or pipe for the distribution of water in said street.

That long before the time when the said order was passed and

the said water pipe or main was laid, as is above set forth, the said house in said petition described contained all the fixtures for the use of water in said petition described, and that petitioner obtained a supply of water during all that time by means of a well and pump provided for that purpose, and that the petitioner is now in the full and complete enjoyment of all the said fixtures and of a supply of water by and through the same means provided and used by him for that purpose.

That the water rates demanded by this defendant from the petitioner, as is in said petition set forth, were and are the same rates in and by said ordinance prescribed and fixed, and not other or different rates, and that the said rates were and are the lawfully established rates which this defendant has a right to charge and demand of and from the petitioner in order to entitle the petitioner to obtain a supply of water from the said water works of this defendant, and that this defendant is entitled to and does demand the said sum, to wit, thirteen dollars and fifty cents ($13.50), of and from the petitioner, being its customary and lawful rates for a like service.

That the said ordinance, together with the acceptance thereof and the construction, maintenance, and operation of the said water works, together with the acceptance thereof by said village
98 of Rogers Park and the city of Chicago, as hereinabove set forth, including the extensions so made from time to time, constitutes and is a contract between the defendant and the city of Chicago, which contract, together with all rights, privileges, franchises, and immunities by said ordinance conferred, is the property of the defendant and as such is entitled to the protection of the statutes and laws of the State of Illinois, and particularly to the protection given in and by the constitution of the State of Illinois, in the second section of the second article thereof, which provides that no person shall be deprived of property without due process of law, and also by the fourteenth section of the same article, which prohibits the passage of any law impairing the obligation of contracts, and which contract, rights, privileges, franchises, and immunities are in like manner under the protection of the Constitution of the United States contained in the tenth section of the first article thereof, which in like manner forbids any State to pass any law impairing the obligation of contracts, and of the provision contained in the first section of the fourteenth article or amendment to said Constitution, which provides that no State shall deprive any person of property without due process of law, so that the defendant claims and insists that the city of Chicago was and is without any power whatever to pass the said ordinance in said petition referred to and which is therein alleged to have been passed on October 4th, 1897, and insists that if any such supposed ordinance
99 was pretended to be so passed, as alleged in said petition, that such ordinance was void, illegal, and of no effect.

That the petitioner has not received a supply of water from the defendant solely by reason of his wrongful refusal and neglect to pay the usual, customary, and lawful charges of the defendant for

the said supply of water to him, and not otherwise; and this the defendant is ready to verify. Wherefore it prays judgment, etc.

ROGERS PARK WATER COMPANY,
By PARTRIDGE & PARTRIDGE, *Its Attorneys.*

And thereupon, on the same day, to wit, the 28th day of January, A. D. 1898, three certain demurrers were filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

Circuit Court of Cook County, January Term, 1898.

JOHN B. FERGUS
vs. } Mandamus.
ROGERS PARK WATER COMPANY.

First Demurrer to First Answer.

100 And now comes said petitioner, by Jesse B. Barton, his attorney, and demurs to so much and such part of the said first answer of defendant herein amended and refiled as follows:

"Further answering, this defendant denies that on October 4th, 1897, or on any other day, the city council of the city of Chicago passed any legal and valid ordinance in which it was ordained that the maximum rates and charges for the supply of water furnished by this defendant to the inhabitants of that part of the city of Chicago in which this defendant has been or might be authorized to lay water mains and supply pipes were established or fixed so as to be uniform and equal to those charged by the city of Chicago for water supply from the Chicago city water works; and this defendant alleges and insists that if any such supposed ordinance was pretended to be so passed, as alleged in said petition, that such ordinance was void, illegal, and of no effect, because the said ordinance and contract hereinbefore set forth was then a valid and subsisting contract between the city of Chicago and this defendant, and the said city of Chicago and the council thereof were without any right, power, or authority to change the terms of the said ordinance and contract, which fixed a rate to be charged by this defendant to the inhabitants of that part of the city of Chicago formerly comprised in said village of Rogers Park and including the premises in said petition set forth; and this defendant alleges
101 and insists that by reason of the premises the said supposed ordinance was and is utterly void, without any force, effect, or legal authority whatever."

JESSE B. BARTON,
Petitioner's Attorney.

STATE OF ILLINOIS, } ss:
Cook County, }

Circuit Court of Cook County, January Term, 1898.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Mandamus.

Second Demurrer to First Answer.

And now comes the said petitioner, by Jesse B. Barton, his attorney, and demurs to so much and such part of the said first answer of defendant herein amended and refiled as follows:

"This defendant avers and insists that by reason of the premises a contract between the said petitioner and the defendant was made and entered into with respect to a supply of water by the defendant to the petitioner in the said premises and dwelling-house during such time and for so long a time as the petitioner should desire the water to be so supplied; that the petitioner is entitled to
have a supply of water to himself and to the said premises
102 and dwelling-house continued upon the terms and conditions of the said contract and not otherwise, and this defendant avers that it has been at all times ready and willing to supply water to said premises upon the terms prescribed in said contract, of which the petitioner then — there had notice, but that to comply with the contract on his part and to pay the sums of money in and by said contract and the said rules and regulations called for and required the said petitioner neglects and refuses on the *part* of the petitioner that the supply of water has been discontinued and cut off from the said premises by the defendant. Wherefore the defendant says that the petitioner is deprived of the said supply of water solely by reason of his own wrong.

JESSE B. BARTON,
Petitioner's Attorney.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County, January Term, A. D. 1898.

JOHN B. FERGUS
vs.
ROGERS PARK WATER WORKS. } Mandamus.

Demurrer to Third Answer.

And now comes the petitioner, by Jesse B. Barton, his attorney, and says that the third amended answer of said defendant
103 originally filed herein on the 28th day of January, 1898, as a further answer is not sufficient in law to be pleaded to or

traversed; and this he is ready to verify. Wherefore he prays judgment.

JESSE B. BARTON,
Petitioner's Attorney.

And thereupon, on the same day, to wit, the 28th day of January, A. D. 1898, a certain pleas was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss.:
County of Cook, }

Circuit Court of Cook County, January Term, 1898.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Mandamus.

And the petitioner, by Jesse B. Barton, his attorney, comes and as to the first answer of the said defendant amended and refiled herein says that he is ready to aver, maintain, and prove the allegations of his said petition as to the height of the dwelling-house in his said petition described and as to the various appliances and fixtures therein; and of this the petitioner put- himself upon the country.

JESSE B. BARTON,
Petitioner's Attorney.

104 And for a further plea in this behalf to said first answer petitioner, by his attorney aforesaid, says that he denies that the board of said village of Rogers Park on the 12th day of November, 1888, or at any other time, passed the ordinance in the said amended and refiled answer described, or any other ordinance of like term or effect; and of this he put- himself upon the country.

JESSE B. BARTON,
Petitioner's Attorney.

And for a further plea in this behalf to said first answer petitioner, by his attorney aforesaid, says that the said defendant did not by assignment or otherwise become possessed of any of the rights, benefits, or privileges, franchises, or immunities in said amended and refiled answer alleged to have been granted to said H. E. Keeler by said board of trustees; and of this he puts himself upon the country.

JESSE B. BARTON,
Petitioner's Attorney.

And for a further plea in this behalf to said first answer petitioner, by his attorney aforesaid, denies that any contract ever existed between said defendant and said village of Rogers Park or ever existed or nor exists between said defendant and the city of Chicago by reason of the said alleged ordinance, alleged to have

been passed by said board of trustees November 12th, 1888, or concerning anything therein contained; and of this he puts himself upon the country.

JESSE B. BARTON,
Petitioner's Attorney.

105 And for a further plea in this behalf to said first answer petitioner, by his attorney aforesaid, denies that the maximum water rates or charges due in said dwelling-house so occupied by petitioner, if uniform and equal in every particular with those charged by the city of Chicago for a supply of water from the Chicago city water works for the half year from November 1, 1897, to May 1, 1898, if paid on or before December 15, 1897, would amount to more than the sum of $8.72; and of this he puts himself upon the country.

JESSE B. BARTON,
Petitioner's Attorney.

And the petitioner, by his attorney aforesaid, comes, and as to the further and separate answer secondly amended and refiled of said defendant herein says that he denies that on the 17th day of May, 1897, or at any time thereafter, the rule- or regulations of said defendant prescribed the water rates in said further and separate amended and refiled answer set forth, or any other water rates; and of this he put- himself upon the country.

JESSE B. BARTON,
Petitioner's Attorney.

And afterwards, to wit, on the 29th day of January, A. D. 1898 a certain joinder in demurrer was filed in the office of the clerk of said court in words and figures following, to wit:

106 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Mandamus.

And the defendant, by Partridge & Partridge, its attorneys, says that the said answers and each of them, to which the petitioner has demurred, are sufficient in law, and that, as a matter of law, the said demurrers and each of them ought to be carried back and be sustained to the said petition.

PARTRIDGE & PARTRIDGE,
Attorneys for said Defendant.

And afterwards, to wit, on the 10th day of February, A. D. 1898, a certain replication was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

Replication.

And the defendant, The Rogers Park Water Company, by Partridge & Partridge, its attorneys, comes and defends, etc., and
107 as to the plea heretofore filed by said petitioner as to the height of said dwelling-house and as to the various appliances and fixtures therein, whereof the petitioner has put himself upon the country, the defendant does the like.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the plea by the petitioner secondly above pleaded, wherein said petitioner denies that the board of trustees of said village of Rogers Park, on the 12th day of November, 1888, or at any other time, passed the said ordinance in said answer described, or any other ordinance of like tenor or effect, whereof the petitioner has put himself upon the country, the defendant does the like.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the said plea by the petitioner 3rdly above pleaded, wherein the petitioner avers that the defendant did not, by assignment or otherwise, become possessed of any of the rights, benefits and privileges, franchises or immunities in said answer alleged to have been granted to said H. E. Keeler by the said board of trustees, and whereof the petitioner has put himself upon the country, the defendant does the like.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

108 And as to the plea by the petitioner 4thly above pleaded, wherein the petitioner denies that any contract ever existed between the defendant and said village of Rogers Park or ever existed or now exists between the defendant and the city of Chicago by reason of the said ordinance or concerning anything therein contained, the defendant says that the said pleas, as to the matters and things therein contained, are not sufficient in law, in manner and form as the same are therein set forth, to require the defendant to reply thereunto; and this it is ready to verify. Wherefore it demurs to the said plea and prays judgment, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And as to the plea by the petitioner 5thly above pleaded, wherein he denies that the maximum water rates due on said dwelling-house so occupied by petitioner, if uniform and equal with those charges by the city of Chicago for a supply of water from the Chicago city water works for the half year from Nov. 1, 1897, to May 1, 1898, if paid on or before December 15th, 1897, would amount to more than the said sum of eight dollars and $\frac{72}{100}$ths ($8 72), and whereof he has put himself upon the country, the defendant does the like.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

109 And as to the plea by the petitioner 6thly above pleaded, being the plea to the second answer of the defendant herein, wherein the petitioner denies that on the 17th day of May, 1897, or at any other time thereafter, the rules and regulations of the defendant prescribed the water rates in said answer set forth, or any other water rates, whereof the petitioner has put himself upon the country, the defendant does the like.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And the defendant says that the said answers and the parts or portions thereof to which the petitioner has heretofore severally demurred are, and each of them is, sufficient in law; and this the defendant is ready to verify.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

And afterwards, to wit, on the 25th day of March, A. D. 1898, a certain verdict was filed in the office of the clerk of said court in words and figures following, to wit:

We, the jury, find the issues for the petitioner.

GEO. E. HARGREAVES, *Foreman.*

And thereupon, on the same day, to wit, the 25th day of March, A. D. 1898, the following proceedings were had and entered of record in said court, to wit:

110 *Order, March 25, '98.*

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Petition.

This cause being called for trial, come the parties, by their attorneys, respectively, and issues being joined, it is ordered that a jury come; whereupon come the jurors of a jury of good and lawful men, to wit, J. Caut, F. B. Cooker, G. E. Hargreaves, C. Frederick, H. Grollhendieck, M. W. Binse, E. M. Endicott, A. M. Goetz, A. M.

Calay, C. C. Becker, J. E. Allen, and S. Anderson, who, being duly elected, tried, and sworn well and truly to try the issues joined herein and a true verdict render according to the evidence, after hearing all the evidence adduced, say: We, the jury, find the issues for the petitioner. Whereupon the respondent enters herein its motion for a new trial in said cause. After arguments of counsel and due deliberation by the court, said motion is overruled and a new trial denied, and thereupon the defendant enters herein its motion in arrest of judgment; which motion is also overruled and denied.

Therefore it is considered by the court that a peremptory writ of mandamus do issue herein, commanding the respondent, Rogers Park Water Company, to receive from the petitioner herein the sum of eight dollars and seventy-two cents and turn on and supply water to the petitioner until the first day of May, A. D. 1898, in the dwelling-house on Sheridan road or drive occupied by the petitioner, and that the petitioner do have and recover of
111 and from the respondent, Rogers Park Water Company, his costs and charges in this behalf expended and have execution therefor.

Thereupon the respondent, having entered its exceptions herein, prays and appeal from the judgment of this court to the superior court in and for the State of Illinois, which is allowed upon filing herein its appeal bond in the penal sum of two hundred and fifty dollars, to be approved by the clerk of this court, together with its bill of exceptions, within twenty days from this date.

Be it remembered that heretofore, to wit, on the 21st and 27th days of December, A. D. 1897, the following proceedings were had and entered of record in said court, to wit:

Order, Dec. 21, '97.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Petition for Mandamus.

On motion of plaintiff's attorney, it is ordered that an alias summons do issue herein, returnable December 27th, 1897.

Order, Dec. 27, '97.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.*, etc.,
vs.
ROGERS PARK WATER COMPANY. } 178,846. Petition.

On motion of respondent's attorney, it is ordered that the time to plead herein be, and the same is hereby, extended ten days.

And afterwards, to wit, on the 8th, 17th, and 25th days of
112 January, A. D. 1898, the following proceedings were had and entered of record in said court, to wit:

Order, Jan'y 8, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Petition for Mandamus.

This cause coming on to be heard upon the demurrer to the petition filed in said cause, after arguments of counsel and due deliberation by the court said demurrer is overruled, and it is ordered that the defendant be, and it is hereby, required to answer said petition within five days from this date.

Order, Jan'y 17, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Mandamus.

On motion of petitioner's attorney, it is ordered that the defendant be, and is hereby, required to rejoin to the petitioner's plea of travers- filed in said cause to the defendant's answer within ten days from this date.

Order, Jan'y 25, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Mandamus.

On motion of petitioner's attorney, it is ordered that leave be, and the same is hereby, given him to withdraw plea or traverse filed herein on January 18th, A. D. 1898, by the petitioner.

113 And leave is hereby given the defendant to file an amended answer herein by twelve o'clock Friday morning next.

And afterwards, to wit, on the 3rd, 5th, and 26th days of February, A. D. 1898, the following proceedings were had and entered of record in said court, to wit:

Order, Feb. 3, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Mandamus.

This cause coming on to be heard on the petition of the petitioner herein, duly verified, for leave to file verified copies of the original petition and of the plea or traverse to the defendant's answer alleged to be lost or destroyed, and it appearing to the court that due and diligent search has been made for the original petition, the summons and alias summons, the appearance of defendant, the demurrer

of defendant to the said petition, the answer of defendant to said petition, the plea or traverse of said petitioner to said answer, and the demurrers of the defendant to said plea or traverse, and that the same cannot be, nor can any of them be, found, and that the same, all and each of them, is lost or destroyed—

Wherefore it is ordered by the court that permission be, and the same is hereby, granted to the petitioner to file herein instanter a verified copy of said petition and a verified copy of said plea or traverse, and that the same and each of them be taken and treated for all purposes the same as the originals of which they are respectively copies.

114 And it is further ordered that the said defendant file herein on or before 9.30 a. m. February 5th, 1898, true and substantial copies, duly verified as such, of the demurrer of said defendant to the petition herein, the answer to said petition, and the demurrers of said defendant to the plea or traverse of said defendant respectively, and that the same, when so filed, be taken and treated for all purposes the same as the originals of which they are respectively copies.

Order, Feb'y 5, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Mandamus.

On motion of plaintiff's attorney, it is ordered that the defendant be, and it is hereby, required to reply, demur to, or join issue on petition filed herein by Thursday, February 10th, 1898.

Order, Feb'y 26, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Mandamus.

This cause coming on to be heard upon the demur-s to the first and third answers filed herein, after arguments of counsel and due deliberation by the court said demurrers *is* sustained.

Thereupon the defendant elects to stand by its pleas.

115 And afterwards, to wit, on the 5th day of March, A. D. 1898, the following proceedings were had and entered of record in said court, to wit:

Order, Mar. 5, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER Co. (a Corp.) } 178,846. Mandamus.

This cause coming on to be heard upon the demurrers interposed by the petitioners to the first and third answers of the defendant, herein filed, and also upon the demurrer interposed by the defend-

ant to the fourth plea of the petitioner to the first answer of the defendant filed herein, after arguments by counsel and due deliberation by the court it is ordered by the court that said demurrers of the petitioner be sustained; to which order and decision by the court the defendant, by its counsel, then and there duly excepted and elected to abide by its said answers.

And in like manner it is ordered by the court that the said demurrer of the defendant be overruled: to which order and decision of the court the defendant, by its counsel, duly excepted and elected to abide by its said demurrer.

And afterwards, to wit, on the 14th day of April, A. D. 1898, the following proceedings were had and entered of record in said court, to wit:

116 *Order, Ap'l* 14, '98.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } 178,846. Mandamus.

On the stipulation of the parties filed herein, it is ordered that the time to file the bill of exceptions herein be, and the same is hereby, extended to April 20th, 1898.

Be it remembered that on, to wit, the 14th day of April, A. D. 1898, a certain bill of exceptions was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, }
County of Cook. }

In the Circuit Court.

FERGUS
vs.
ROGERS PARK WATER COMPANY. }

John B. Fergus.
C. H. Ceperly.
W. W. McGaffey.

Filed April 14, 1898.

JOHN A. COOKE, *Clerk.*

117 STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of Cook County, March Term, A. D. 1898.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY. } Petition for Mandamus.

Bill of Exceptions.

Be it remembered that heretofore, to wit, on the 25th day of March, A. D. 1898, being one of the days of the March term of said

court, before his honor Elbridge Hancey, presiding on the common law side thereof, and a jury, this cause came on for trial upon the pleadings heretofore filed herein.

Mr. Jesse B. Barton appearing on behalf of the petitioner.

Messrs. Partridge & Partridge appearing on behalf of the defendant.

And thereupon the petitioner, to maintain the issues on *its* part, introduced the following evidence, to wit:

JOHN B. FERGUS, the petitioner, called as a witness on his own behalf, being first duly sworn, was examined in chief by Mr.
118 Barton and testified as follows:

Q. What is your name?
A. John B. Fergus.
Q. You are the petitioner in this case?
A. Yes, sir.
Q. You reside on the premises described in the petition?
A. Yes, sir; I do.
Q. In what ward of the city are these premises located?
A. In the 25th ward.
Q. Of what does your family consist, residing on these premises?
A. Of a wife and two children.
Q. Any boarder?
A. No, sir.
Q. What is the front width of the house situated on those premises?
A. Forty-eight feet.
Q. How many stories in height?
A. Two.
Q. What water fixtures are in the house connected with the water-works system of the defendant?
A. There are three hand basins, one bath-tub, two closets, one kitchen sink, and one laundry tub—two tubs.
Q. Any hose for lawn-sprinkling?
A. Yes, sir.
Q. How many?
A. One.
Q. Any green-house connected with the premises?
A. No, sir.
Q. Any barn or stables?
A. No, sir.

Cross-examination.

By Mr. PARTRIDGE:

Q. Will you look at the paper I now show you and state whether or not that is your signature?
A. No, sir.
Q. Do you know whose handwriting that is?
A. Yes, sir.

119 Q. Whose handwriting is it?
A. My wife's.

Mr. PARTRIDGE: I ask to have this paper marked for identification Defendant's Exhibit 1.

Q. Did your wife have authority to sign this paper for you?
A. Yes, sir.

Mr. BARTON: I offer in evidence certified copy of an ordinance passed by the city council of the city of Chicago and certified to have been passed on the 18th day of October, 1897.

Mr. PARTRIDGE: We desire to object to this ordinance as incompetent and immaterial.

The COURT: The ordinance regulating the rate?

Mr. BARTON: Yes; your honor.

The COURT: Let it go in.

To which ruling of the court counsel for defendant then and there duly excepted.

Said ordinance was read in evidence and is as follows:

"An ordinance prescribing maximum rates and charges for the supply of water furnished by the Rogers Park Water Company.

Be it ordained by the city council of the city of Chicago.

SECTION 1. That the maximum rates and charges for the supply of water furnished by the Rogers Park Water Company to the inhabitants of that part of the city of Chicago in which said company has been or may be authorized to lay water mains and supply pipes, are hereby established and fixed so as to be uniform and equal in every particular with those charged by the city of Chicago for water supplied from the city water works."

Mr. BARTON: I offer in evidence an ordinance of the city
120 of Chicago published in book form, purporting to be published by authority of the city council of the city of Chicago and noted in such published book as having been passed on the 8th day of April, 1897.

The COURT: You do not raise any question as to the authenticity of the ordinance?

Mr. PARTRIDGE: No, sir.

Mr. BARTON: I desire to read certain parts of it.

Mr. PARTRIDGE: We object to this as incompetent and inadmissible in this case and immaterial.

The COURT: You concede it is an ordinance of the city?

Mr. PARTRIDGE: I don't object to it on the ground of failure to prove the ordinance.

Mr. BARTON: I wish *it* read in evidence a part of section 1981 of this ordinance as follows:

"The minimum water assessment on each and every building fronting on any street, avenue or other public highway, in or through which any public water supply pipe is laid, shall be the amount respectively specified hereinafter as frontage rates, and for special uses of water such rates, in addition, as are hereinafter

named: Provided, however, that when the supply of water to any building or premises is wholly controlled by meter, the said building or premises shall be assessed by meter measurement only, irrespective of the number and character of the fixtures, or the special use for which the water may be used: Provided, further, that in no case shall any building or premises supplied through meter,
121 pay less per annum than the amount prescribed for said building or premises by frontage rates."

Mr. BARTON: And from the same section:

"Frontage rates on buildings having front width of over 44 to 48 feet, two stories in height, $15.50 per annum."

Also section 1981: "All basements and attics containing one or more finished rooms, shall be deemed and estimated as additional stories; modern flats, or family hotels, occupied by more than one independent family, shall be charged for each additional family $3.00 per annum; ordinary dwellings, occupied by more than two families, three dollars for each additional family in excess of two."

Also from the same section as follows: "Private dwelling rates. In addition to frontage rates. A family may consist of any number of persons, not to exceed twelve, including all children, boarders, employees and servants; each person in excess of that number shall be assessed fifty cents per annum. The rate for special water fixtures shall be as follows:

Bathing tubs in private dwelling-houses only, beyond one, each, per annum	$3.00
Water-closets and privy vaults in private dwelling-houses only, beyond one, each, per annum	3.00
Urinals, each per annum	1.00
Wash-hand basins, with faucets, beyond one, each, per annum	1.00
Steam-heating per ton of coal consumed	.05
Green-houses attached to private dwellings each per annum	2.00 to 6.00
Each hose used for sprinkling or washing walks, windows, and like purposes, per annum	3.00

122 Also from the same section as follows:

"Meter measurement rates.—For each one thousand gallons of water used on each independent premises measured and registered by meter, up to and not exceeding 165,000 gallons per month, ten cents per thousand. For each one thousand gallons measured in like manner, in excess of 165,000 per month, eight cents per thousand gallons: Provided, that in no case shall premises supplied through meter pay a less rate than the per annum frontage rate imposed upon like premises not controlled by meter."

Also from section 1985 as follows:

"The water rates or taxes as hereinafter established shall be paid semi-annually in advance at the office of the department of public works. The semi-annual payment shall cover a period from the first day of May to the 31st day of October, and from the first day

of November to the 30th day of April, in each and every year. There are hereby created seven water districts, as follows:

Fifth district.—Embracing that portion of the city comprising the twenty-fifth, twenty-sixth, twenty-seventh, and twenty-eight wards."

Also from section 1986 as follows:

"The semi-annual payment of water rates or taxes assessed in the several districts aforesaid shall be due and payable as follows:

Fifth district: Between the first day of May and the fifteenth day of June, and between the first day of November and the fifteenth day of December, respectively of each and every year."

Also all of section 1987:

"Rebate.—Any person who shall pay the water rates or tax at any time within the period hereinbefore described for the
123 respective districts for the current months, commencing on the first days of May and November, respectively, shall be allowed a rebate of fifteen per cent. on the whole amount assessed or charged to him for said ensuing six months; provided, however, that the rate-payers may pay water rates or taxes in any of the districts aforesaid prior to the time respectively prescribed, and thereby obtain the rebate named. Every person who shall fail to pay the water rates or taxes assessed or charged to him within the time prescribed herein for the said payment shall not be entitled to any rebate, and every person who shall fail to pay his water rate or tax within two months from and after the expiration of the semi-annual period of each year herein prescribed for the payment of the same, shall have the use of the water stopped until the full payment thereof, and all arrearages and charges for shutting off and turning on the water is made."

The COURT: Did you prove a tender of the amount?

Mr. BARTON: It is admitted.

The COURT: Where?

Mr. BARTON: By the pleadings. There is an admission of a tender of $8.72.

Mr. PARTRIDGE: There is no admission that that is the correct amount.

Mr. BARTON: Oh, no; but the amount is admitted, and that tender was made of that amount.

The COURT: Is that the correct amount in accordance with the ordinance?

Mr. BARTON: Yes, sir.

Mr. PARTRIDGE: No; we don't admit that.

The COURT: Well, that is your case.

124 Mr. BARTON: That is my case.

Which was all the evidence here offered on the part of the petitioner.

And thereupon the defendant, to maintain the issues upon its part, introduced the following evidence, to wit:

Mr. PARTRIDGE: We desire first to read in evidence the paper identified by the witness.

The COURT: The application?

Mr. PARTRIDGE: The application. It read as follows:

(DEFENDANT'S EXHIBIT 1.)

"*Application for a Supply of Water.*

ROGERS PARK, ILL., *May* 17, 1897.

To superintendent Rogers Park Water Company:

I, the undersigned, hereby request and contract for a supply of water from the company's main to premises known as lot 7, block 9, 3229 Sheridan road, located on the west side of Sheridan road, between Devon and Albion avenue, in said village, for use and from fixtures as enumerated on the margin hereof. Said water to be supplied subject to the rules and regulations of said company now in force or which may hereafter be enacted or adopted, which rules and regulations are hereby made and declared to be a part of the contract between me and said company for supplying said premises with water.

J. B. FERGUS, *Owner.*

1 tap, 1 St. washers or sill cocks, 3 basins, 1 bath-tub, 2 water-closets, ten rooms, dwelling, 100 feet front lawn; 3 persons or families using same fixtures."

125 The COURT: Is the annexation of Rogers Park also admitted in the pleadings?

Mr. BARTON: Yes, your honor.

The COURT: Was that subsequent to the date of this application or prior?

Mr. PARTRIDGE: Long prior.

The COURT: When was the application made?

Mr. PARTRIDGE: May 17th, 1897. It is not quite a year ago.

The COURT: Very well.

Mr. BARTON: That is the application for water. The demand for water being turned on and the tender of water rates on which we are basing our petition for mandamus was made on the 11th day of December, 1897.

Mr. PARTRIDGE: We desire next to offer in evidence, may it please the court, a certified copy of the ordinance set up in the pleadings and certified by the city clerk the 18th day of March, 1898.

The COURT: What else, now?

Mr. BARTON: I object to the introduction of this as incompetent, on the ground that there is no certificate here and no showing that it was ever published.

Mr. PARTRIDGE: We will have to make proof of publication, your honor. It is customary that the city clerk certify those——

The COURT: It is not in this case.

Mr. PARTRIDGE: It is not, and we will have to prove the publication outside.

The COURT: What is this ordinance?

Mr. PARTRIDGE: The original ordinance of the water company.

The COURT: Can you give the substance of it without having to read it all?

126 Mr. PARTRIDGE: I will only state the substance of it, reading those parts which are necessary. The substance of the ordinance is a grant in consideration of the public benefit to be derived therefrom, quality of the water, certain public rights in the use of water for certain specified purposes, the filing of a bond, and provisions with relation to the extension of the supply, and providing for the payment of hydrant repairs, etc., by the village.

Then section 12:

"The said grantee or assigns shall charges the following annual water rates to consumers of water during the existence of this franchise, and they shall have the right at any time to insert a water meter into the service pipe of any consumer and to charge and collect of him at meter rates, provided that in such cases that the minimum annual rate paid by any one consumer shall be five dollars."

The COURT: Well, what is the difference between that and the city rates fixed by the city ordinance?

Mr. PARTRIDGE: It makes about four dollars difference in six months.

The COURT: Eight dollars a year?

Mr. PARTRIDGE: Somewhere in that neighborhood. I cannot give you the exact difference, but it is in that neighborhood. It is about that, your honor.

The COURT: About eight dollars a year for those sized rooms?

Mr. BARTON: About six dollars on each six months.

Mr. PARTRIDGE: The city rates, may it please the court, are subject to a cash discount for prompt payment.

127 Our rates were not subject to a discount, and the other real difference in the rates consists in the fact that the city furnishes a free closet and a free bath, while we charge for the first the same as for those additional, allowing no cash discount.

The COURT: The last ordinance changes even that.

Mr. BARTON: Yes; that was not in force, however, when this proceeding was commenced, nor when the ordinance that I offered in evidence was passed.

The COURT: The whole ordinance is in.

Said ordinance was marked "Defendant's Exhibit 2," and is as follows:

An ordinance to provide for supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works.

Be it ordained by the board of trustees of the village of Rogers Park, Cook county, Illinois.

SECTION 1. That in consideration of the public benefit to be derived therefrom, the village of Rogers Park, Ill., hereby grants

the exclusive right and privilege for the period of thirty years from the time that this ordinance takes effect unto H. E. Keeler, his successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and the said village hereby grants the exclusive right of using the streets, alleys, public squares and all other public places within the corporate limits of said village as they now exist, or may hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for furnishing, storing and conducting an adequate supply of good wholesome, clear water to the said village and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said grantee, his successors and assigns, shall exercise care and diligence in the use of said streets, alleys public squares and other public places, and shall cause no unnecessary obstruction of, or interruption of the public travel over or upon same or any injury to, or interference with any pipes, mains or sewers which may now be lawfully located beneath the surface thereof.

The said grantee, his successors and assigns, shall take due precaution to provide against danger to life and limb by reason of the exercise of their rights and privileges, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purpose for which said streets, alleys, public squares and other public places may be used, they shall be restored to their former condition as near as may be without unnecessary delay.

The said grantee, his successors and assigns, hereby agree to hold the said village harmless from liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the system of said water works shall be as follows: same to be subject to approval of the village board of trustees.

Mains.—These shall be ample in size to supply water to meet the demands for water for fire and domestic purposes and shall vary in diameter from 12 inches to 4 inches.

They will be of the best quality of cast-iron pipe and will be tested at the foundry to a pressure of three hundred (300) pounds to the square inch, and shall be tested after the works are completed to a pressure of 125 pounds per square inch, as shown by a gauge attached to a hydrant near the Chicago & Northwestern Railroad depot, and remain tight under said pressure, provided that no single length of four-inch main longer than eight hundred (800) feet shall be constructed and laid.

Hydrants.—These shall be of the best kind and quality manufactured, shall be provided with two hose nozzles and shall be frost-proof. They shall be strong enough to stand the same tests as those provided for the mains. The grantee, or assigns, shall

furnish at their expense sixty hydrants with their branch castings and connections, and located in such places upon said first five miles of mains as the trustees may direct. Said location to be made within thirty days (30) after the date of the acceptance of this ordinance those furnished and located at the time the mains are laid shall be erected and connected with the mains by the grantee, his successors and assigns, and if the village shall at any time in the future elect to place intermediate hydrants on the original pipe system, such hydrants shall be placed by the grantee at the expense of the village, and the town shall pay no rent therefor.

130 Those furnished and located thereafter shall be erected and connected with the mains by the grantee or assigns, but the cost thereof shall be paid by the village of Rogers Park. Said hydrants shall be under the sole charge, for said village, of the chief of the fire department, and all repairs and damages except those caused by ordinary wear and tear shall be repaired by said grantee or assigns, and the actual cost of such repairs shall be paid by said village.

Gates and valves.—These shall be of the best quality and shall stand successfully the test prescribed for the mains.

Pumps.—The pumping machinery used shall be one compound and one high-pressure duplex pumping engine, and shall at the outset have a capacity sufficient for fulfilling the terms and conditions of the ordinance, same to be of not less than 1,500,000 gallons capacity in 24 hours, and shall have boilers of capacity to furnish sufficient steam for them when running at full speed. It and its appurtenances shall be of the best make, strong and durable. It will be kept in good working order at all times, saving unavoidable accidents, and its total capacity shall be increased from time to time as the needs of the village may require. It will be so arranged that the connection with the stand-pipe may be closed instantly and that it will pump directly into the mains.

Stand-pipe.—This shall be built of steel, and shall be not less than 12 feet in diameter. Its top shall be not less than 100 feet above the elevation of the ground in front of the C. & N. W. R. R. depot in said village of Rogers Park. It shall at all times be kept as nearly full as is practical.

131 SECTION 3. In consideration of public benefits and the protection to property resulting from the construction of the said system of water works, the said village hereby agrees to pay an annual rental for fire protection to said grantee, his successors and assigns for not less than five miles of mains within the corporate limits of said village, for the aforesaid period of thirty years, at the annual rate of five hundred and seventy-five dollars for each mile of mains, to be payable semi annually on the first day of July and January in each year. Also the village of Rogers Park agrees to pay all municipal or village taxes which may be assessed against the plant of said grantee, or assigns, for the first ten years the water works are operated. The rental for fire protection of mains in excess of said five miles, as hereinafter provided, at the request of the

said village shall be at the annual rate of four hundred dollars for each mile of mains, payable as aforesaid during the unexpired period of the said original term of thirty years. The rental shall begin at such time as the said grantee or assigns shall begin to maintain continuously a pressure of 40 pounds per square inch. Water shall be used from the hydrants for the extinguishment of fires, and for flushing sewers only. In flushing sewers automatic devices may be used and so regulated that they shall not discharge more than 60 gallons each per day, and, that there shall not be more than ten for each mile of mains, and that the same shall always be kept in proper working condition by the village and all waste of water prevented.

The village shall also have the right to use water from all the public hydrants during the full term and continuance of this franchise and contract for the purpose of flushing public sew-
132 ers and gutters whenever the said village shall deem it necessary for sanitary purposes, upon giving notice to said grantee or assigns at the pumping station. Said flushing to be done by the village through hose and fire nozzle only, but there shall not be more than two hydrants open at one time for such purpose, and no one hydrant shall be opened oftener than twice a week and not longer than twenty minutes at one time for such a purpose, and there shall be no flushing in the time of fire. The village shall use the water as provided in all of above cases in a reasonable manner and without unnecessary waste. Said grantee, his successors and assigns hereby agrees to furnish, without additional charge, in consideration of franchise and rentals, hereby agreed to be paid by said village, water sufficient to supply two drinking fountains (public) for the use of man and beast. The supply pipe of each shall not be larger than one-half inch in diameter, to be constructed at such places in said village as the village board may direct. Also one jet fountain of not to exceed ¼-inch orifice in each of the public parks of said village; also water sufficient to supply each of the public schools in said village, and also at the public offices of said village, and for the use of the fire department, at the engine-house of said village. The said village agrees to furnish said fountains, faucets, etc., and furnish all material and pay the expense of connecting same with the mains of grantee or assigns, and to use every precaution to prevent all waste of water.

133 The said grantee, his successors or assigns, in consideration of the rental herein agreed to be paid, and in consideration of rights and priveleges granted expressly agrees on its part to furnish to said village of Rogers Park, and to the residents thereof, an adequate supply of good, wholesome and clear water fit for culinary and drinking purposes; said water to be taken from Lake Michigan at such a point near the north boundary line of said village as will best insure its freedom from sewerage contamination and it shall be filtered by the most modern and by an acceptable process before being delivered into the mains for supplying said village, and if said grantee, his successors and assigns

shall at any time fail to furnish a supply of water to said village and the residents thereof, of the quality and quantity provided for in this ordinance, then all rentals to be paid by said village to said grantee or assigns, shall cease until said grantee or assigns shall provide and supply water of the degree of purity and in the quantity provided for in this ordinance, and also provided that should said grantee or assigns fail to supply water of the quality and quantity and in the manner aforesaid to said village and its inhabitants for a greater length of time than one year at any time and after having been given due notification by said village that the authorities of said village consider the supply of water, either in quality or quantity, not in compliance with this ordinance than the said grantee or assigns shall forfeit and surrender to said village its said franchise and all other rights and privileges granted under this ordinance, and the contract herein entered into shall be null and void. Said grantee or assigns further agrees to furnish such steam as may be needed for running one or more air-compressors
134 to be furnished by said village and located in the pumping station of said grantee or assigns; the total power used by said air-compressors shall at the outset not exceed 10-horse power. All power in excess of that above provided, which said village may need for running air-compressors, shall be furnished by said grantee or assigns at a cost of seventy-five dollars per horse-power per annum.

SECTION 5. Upon the completion of the construction of the said system of water works the said grantee or assigns shall notify the board of trustees of said village to that effect, and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw water through 100 feet of 2½ inch hose and one-inch nozzle from each of six (6) different hydrants not located on the same main, to a height of 90 feet above the level of the ground at the C. & N. W. R. R. depot when the air is still. The performance of this test shall be a fulfillment by the grantee or assigns of the terms and conditions of this ordinance so far as relates to strength and capacity. Said grantee or assigns shall so maintain and enlarge said water works that they will at all times be capable of performing such tests, and said village board shall have the right to order a repetition of said tests annually by giving said grantee or assigns a written notice of thirty days, and a failure on the part of said grantee or assigns to make such test shall cause a suspension of said rental of mains until said grantee or assigns successfully perform said test.

SECTION 6. Within sixty days after the day that this ordinance takes effect, the said grantee or assigns shall file a written ac-
135 ceptance thereof in the office of the village clerk, and at least five thousand dollars work and material on said works shall be done and furnished before December 31st, 1888. The construction of said water works shall be commenced within sixty days after this ordinance takes effect, and said works shall be completed within one year after the commencement of the construction thereof, provided, however, that the term during which the said grantee or assigns are

delayed by floods, act of God, or the public enemy, legal proceedings for the maintenance or defense of their rights or in the acquisition of property, water rights, right of way, mutinous interference or by reason of any other cause whatever beyond its control, shall form no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them.

SECTION 7. The said village board of trustees shall from time to time pass and enact ordinances, under suitable penalties, providing for the protection of said works from damage, fraud or imposition.

SECTION 8. At the expiration of ten years after the completion of said works, and at the expiration of each succeeding period of five years thereafter, the said village shall have the right and privelege to purchase the said system of water works, provided they notify the said grantee or assigns of their intention so to do at least six months before the expiration of said period or periods of years. The value of said system shall be ascertained as follows: The said grantee or assigns and the said village shall each appoint one person, and the two appointees shall choose a third, and the
136 three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. In case the two experts chosen disagree upon the selection of the third he shall be appointed by a judge of the circuit court of some adjoining circuit. None of the board shall be residents of Rogers Park, Ill. The said board in fixing the value of said works shall take into consideration the value of the franchise, the value of water rights and right of way, the revenue from the works and all other facts and considerations legitimately connected with the said works. The said village shall within sixty days after the said board has rendered its decision pay the amount awarded in cash, and upon such payments the said grantee or assigns shall transfer to the said village all their said rights and privileges and property included in said appraisement.

SECTION 9. The said grantee or assigns shall make extensions of mains whenever called upon to do so by the village board of the said village, provided however that said extensions shall be not less than 500 feet in length, and further provided that there shall be one water consumer for each 100 feet along the line of such extension who shall agree to take water at the established rates for a period of at least two years, but as a condition of making such extensions the village agrees to pay for public fire service upon such extensions at the rate of four hundred dollars per annum for each mile of such extension for the unexpired term of this franchise and contract.

SECTION 10. After the said works are put in operation, if at any time, the said grantee or assigns are unable to provide a fire pressure
137 of 60 pounds on the distributing mains at the said C. & N. W. R. R. depot for a period of two weeks in succession, then the rental for the use and employment of the mains for the purpose aforesaid shall cease until such standard of pressure shall be attained.

Nothing herein contained shall be so construed as to prevent the said grantee, or assigns from temporarily shutting off the water from its said system, or any portion thereof, for the purpose of making repairs or extensions to the same, and no liability shall attach to the said grantee or assigns for the suspension of the supply of water, provided the repairs or extensions are made and the water turned on again without unnecessary delay.

SECTION 11. The said grantee or assigns shall have the right to make, alter, amend and enforce rules for governing the connections with their mains, and the use of the water and for preventing the waste of water.

SECTION 12. The said grantee or assigns shall charge the following annual water rates to consumers of water during the existence of this franchise, and they shall have the right at any time to insert a water meter into the service pipe of any consumer and to charge and collect of him at meter rates, provided that in such case that the minimum annual rate paid by any one consumer shall be five dollars.

138 *Tariff of Water Rates.*

Barber shops, 1 chair	$5.00
Barber shops, each additional chair	3.00
Bath-house, public, each tub	7 to 15.00
Bath-house, private, each tub	3.00
Bath-house, boarding-house, each tub	5.00
Blacksmith shops, one fire	4.00
Blacksmith shops, each additional fire	3.00
Boarding and lodging houses and furnished rooms, per room	1.00
Boarding schools, per room	1.00
Butcher shops, engines and boilers extra	7 to 15.00
Dental offices	6 to 10.00
Drug stores	10 to 25.00
Dwelling-house, 5 rooms or less for family	6.00
Each additional room	1.00
Eating-houses	10 to 25.00
Fountains flowing not exceeding 3 hours per day during the season from 1st of April to 1st of November, one-sixteenth $\frac{1}{16}$ inch orifice	8.00
Fountains, one ($\frac{1}{2}$) eight-inch jet for the season as above	10.00
Hose for sprinkling streets, including washing and sprinkling sidewalks, the outside of buildings, per lineal front foot, business houses, per season of 6 months	15.00
Same as foregoing, private houses, per front foot	10.00
Hose for sprinkling lawns of 66 feet frontage 5c. each extra front foot	5.00
Hotels, per room	1.00
139 Livery, sale and feed stables, per single stall including washing carriages	3.50
Private stables, 1 horse including carriage-washing	3.00
Private stables, each additional animal	1.50

Stores not specified otherwise 22 feet, or less, first floor	7.00
Stores, each additional floor	3.50
Stores, each additional front foot	.50
Urinals in hotels, boarding-houses, saloons	6.00
Urinals in private houses	3.00
Urinals in blocks, mfg. establishments	4.00
Urinals in stores banks and offices	3.00

Urinals with constant flow, special rates.

Wash-basins, stationary, first basin in private family free, all others each	3.00
Water-closets, private, per bowl	3.00
Water-closets, public, per bowl	5.00

Yard hydrants, at dwelling or boarding-house rates.

All persons not satisfied with the schedule rates can have the privelege of putting in a water meter at their own expense.

Meter Rates.

Less than 300 gals. per day, per 100 gals	.050
300-400 gals. per day, per 100 gals	.045
400–1,000 " " " " " "	.040
1,000–3,000 " " " " " "	.035
3,000–5,000 " " " " " "	.030
5,000 gals. and upwards per 100 gals	.025
10,000 gals. and upwards, per 100 gals	.020

140 Rates for all other purposes that may be applied for not named in the foregoing schedule of maximum rates will be fixed by estimation or meter, at the option of the grantee or assigns.

SECTION 13. A sufficient tax shall be levied and collected annually upon all taxable property in the village subject by law to such taxation to meet the payments under this ordinance as they may respectively mature, during the existence of any contract for public fire service, which tax shall be irrepealable from and after the passage of this ordinance, and in case the village shall be authorized to levy a special tax for such purposes, such tax shall be annually levied and the proceeds thereof shall be kept as a separate fund to be known as a fire-hydrant fund, and shall be irrevocably and exclusively devoted to the payment of hydrant rentals under this ordinance, and shall not be otherwise employed except that any excess of said tax in any one year over the amount necessary to pay rentals for such year may be used for any purpose that the village of Rogers Park may direct.

SECTION 14. Within sixty days after the passage of this ordinance said H. E. Keeler, his successors or assigns, shall file with the village an acceptance of the same, which acceptance duly acknowledged before some officer authorized to administer oaths shall

have the effect of a contract between the village and said H. E. Keeler, his successors or assigns.

Passed Nov. 12th, A. D. 1888.

JOHN L. HEALY,
Village Clerk.

Approved Nov. 12th, A. D. 1888.

HENRY P. DALY,
President Board of Trustees.

141 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Wm. Loeffler, city clerk of the city of Chicago, do hereby certify that the above and foregoing is a true and correct copy of an ordinance providing for the supply of water for the village of Rogers Park passed by the board of trustees of said village (now a part of the city of Chicago) on the 12th day of November, A. D. 1888, and approved by the then president of the board of trustees of said village on the 12th day of November, A. D. 1888, as recorded in the book of ordinances of said village, page 266, and that I am the lawful custodian of the same.

Witness my hand and the corporate seal of the city of Chicago this 18th day of March, A. D. 1898.

WM. LOEFFLER,
City Clerk.

[SEAL.]

C. H. CEPERLY, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Partridge, and testified as follows:

Q. What is your present employment?
A. I am in the county clerk's office at present.
Q. Where do you live?
A. Rogers Park.
Q. How long have you lived there?
A. 28 years.
Q. In what capacity were you connected with the government of the village of Rogers Park during the year 1888?
142 A. I was one of the village trustees at the time.
Q. Do you remember any time during the fall of the year when the Rogers Park water ordinance was up in the board?
A. Yes, sir.
Q. Do you remember whether there was a paper published in the village at that time, in November, 1888, and afterwards—is there a newspaper published there?
A. Yes, sir.
Q. What was the name of that paper?
A. The Herald.
Q. What is the full name of it?
A. The Rogers Park Herald.
Q. I call your attention to the date of the paper which you hold in your hand. What is its date?

A. November 24th, 1888.

Q. Now, turn the paper over and look at the back; do you remember whether the ordinance was published in that paper which you hold in your hand? Do you remember whether the publication was made?

Mr. Barton: The paper will show.

A. It was published in the Rogers Park Herald, I remember.

Mr. Partridge: Is that a copy of the publication that you have there?

A. It appears to be; yes, sir.

Q. Well, is it? Is that the publication of the ordinance?

A. Well, I have not examined the ordinance. I know the ordinance was printed in the Rogers Park paper, though.

Q. Well, look at it so as to be able to answer. Do you know whether as a matter of fact that was the official publication of the ordinance? Do you know whether that was ordered by the village board?

A. I don't remember whether it was ordered or not.

Mr. Barton: I am perfectly willing to admit that that is a fact. Didn't the board make some provision that all publication of village matters should be in that paper?

A. I think they did. I would not be positive, but I think
143 they did. The records will show that. I think they did.

Mr. Partridge: Was that the only paper published in the village of Rogers Park at that time?

A. It was; yes, sir.

The Court: Well, what next?

Mr. Partridge: If that is the only paper published there, are you willing to admit that was the publication of the ordinance?

Mr. Barton: If you will give me your word for it that it was published by order of the village board, either directly or indirectly, by making that the medium of publication I will admit it.

Mr. Partridge: I am told by the man who was village clerk at the time that that was the publication.

Mr. Barton: All right, then, I will admit it.

Mr. Partridge: Well, if it is admitted that is the official publication I will not put him on the stand.

The Court: He has admitted it.

Mr. Barton: Yes; I will admit that the ordinance was duly published.

The Court: He says he will admit it. What next?

Mr. Partridge: I next offer in evidence a paper, dated the 31st day of January, 1889, showing the assignment of the benefits of the ordinance which has been introduced in evidence by H. E. Keeler, the grantee in that ordinance, to the Rogers Park Water Company. That is the original paper, the articles of agreement — the 31st of January, which paper is marked "Defendant's Exhibit 3."

The Court: It is conceded that Keeler did assign all his interest to the Rogers Park Water Company?

Mr. Partridge: It is denied in the pleadings.

144 Mr. BARTON: He puts this in evidence and said he was going to read it. It may go in without objection.

Mr. PARTRIDGE: This is an agreement assigning by Keeler to the water company the benefit of the ordinance which has been introduced in evidence

Said paper is as follows:

(DEFENDANT'S EXHIBIT 3.)

"Articles of agreement, made and entered into this 31st day of January, A. D. 1889, by and between Hervey E. Keeler, of Chicago, in the county of Cook, and the State of Illinois, party of the first part, and the Rogers Park Water Company, a corporation organized and doing business under the laws of the State of Illinois, and having its principal office in the city of Chicago aforesaid, party of the second part, witnesseth: That whereas, the village of Rogers Park, of Cook county aforesaid, by an ordinance entitled 'An ordinance to provide for a supply of water to the village of Rogers Park, Ill., and its inhabitants, contracting with H. E. Keeler, his successors and assigns, for a supply of water for public use, and giving the said village of Rogers Park, Ill., an option to purchase the said works,' duly passed by the board of trustees of said village on the 12th day of November, A. D. 1888, granted to said party of the first part, his successors and assigns, the exclusive right and privilege for the period of thirty (30) years from the time

145 said ordinance took effect, or erecting, maintaining and operating a system of water works in said village and giving said village an option to purchase said works in accordance with the terms and provisions of said ordinance, and which said ordinance was thereafter duly accepted by said party of the first part; and

Whereas, said party of the second part desires to acquire the privileges, rights, and franchises belonging to or acquired by said party of the first part, and to which he may or might hereafter at any time become entitled under or by virtue of said ordinance; and the said party of the first part desires to sell, assign, transfer, and set over unto said party of the second part all benefit, right, title, privilege, and advantage belonging or hereafter to accrue to him, in any way or manner whatsoever, by virtue of the said ordinance:

It is, therefore, mutually agreed by the parties hereto as follows:

1. Said party of the first part does hereby sell, assign, transfer and set over unto said party of the second part, all right, title, benefit, privilege and advantage whatsoever, which he has, or which he may or might at any time hereafter become entitled — in any way or manner whatsoever, under and by virtue of the said ordinance.

2. Said party of the first part further agrees to convey all necessary real estate upon which to erect the necessary buildings and works in said ordinance provided for, or which may be necessary for the successful operation of the system of water works therein

mentioned; and further, that he will build, erect and put in
146 operation all necessary buildings, five (5) miles of mains, hydrants, gates and valves, pumps, stand-pipe and other machinery to fulfill the requirements of the said ordinance to the satisfaction and acceptance of said board of trustees.

3. In consideration of the promises and agreements hereinbefore contained, of said party of the first part, said party of the second part hereby covenants and agrees to issue to said party of the first part, or to such person or persons as he shall request in writing, the full number of nineteen hundred and seventy (1,970) full-paid shares of the capital stock of said company, of the face or par value of forty-nine thousand two hundred and fifty ($49,250) dollars, to have and to hold to him, his heirs and assigns, to and for his and their own use and benefit; and, further, to issue and deliver to him or to such person or persons as he may request in writing, forty (40) bonds, secured by first mortgage upon all the property rights and franchises of said company, of the par or face value of forty thousand ($40,000.00) dollars, which shall be received and are hereby accepted by said party of the first part in full payment to him for the full performance of all the agreements hereinbefore contained on his part to be performed.

In witness whereof these presents have been signed and sealed by said party of the first part, and the party of the second part has caused the same to be signed by its president and countersigned by its secretary and its corporate seal to be affixed thereto on the day and the year first hereinabove written.

147 HENRY E. KEELER. [SEAL.]
[CORPORATE SEAL.] ROGERS PARK WATER CO.
H. E. KEELER, *President.* [SEAL.]
FRANK D. KEELER, *Sec'y.*

We, the undersigned, subscribers and holders of the full amount of the capital stock of the Rogers Park Water Company, above mentioned, do hereby ratify, confirm, and accept the above and foregoing contract between said company and Hervey E. Keeler."

Mr. PARTRIDGE: I have here a large number of agreements and papers, showing that the city has recognized the Rogers Park Water Company, the present defendant, as the owner of this plant and ordinance, has ordered them to do a great many things, and has paid them a great deal of money, and that sort of thing.

The COURT: Is that controverted in the pleadings?

Mr. BARTON: Yes, your honor; it is not admitted in any way.

Mr. PARTRIDGE: All I desire to show, your honor, is an actual user of this ordinance, and that it has been continuously used and exercised, and that the present defendant has been recognized during all this time as the owner and operator of these water works.

Mr. BARTON: I admit an actual user since the completion of the water works and continuous recognition of the company by the vil-

lage and city authorities as having the right to operate the system of water works.

The COURT: Then that is not controverted.

Mr. BARTON: Not that general proposition.

The COURT: If you allege, and he does not deny, then it is admitted.

Mr. PARTRIDGE: I have here the original acceptance of the
148 works as provided in the ordinance, which I desire to introduce in evidence, to show that when the works were constructed by the company, which did construct them, that they were accepted by the village as complying with the ordinance, which is marked "Defendant's Exhibit 4."

The COURT: You have got past that, haven't you?

Mr. PARTRIDGE: I will put this in. It is a very short paper.

Said paper is as follows:

(DEFENDANT'S EXHIBIT 4.)

ROGERS PARK, *Aug. 21st*, 1889.

H. E. Keeler, Esq., pres. Rogers Park Water Company.

DEAR SIR: At a special meeting duly called of the board of trustees of the village of Rogers Park, held Aug. 19th, the following resolution was unanimously carried:

Whereas, in accordance with notice received from the Rogers Park Water Co., dated Aug. 10th, 1889, a public test was made Aug. 17, 1889, and the power and capacity of the completed water works were shown to be ample to comply with the requirements of the water-works ordinance and section 5 of said ordinance:

Therefore resolved, That the village of Rogers Park, through its board of trustees, hereby accept said system of water works and pipe distribution as ordered by said board of trustees.

Yours respectfully,

A. W. CRAIG,
Acting Village Clerk.

A true copy.

149 STATE OF ILLINOIS, }
Cook County, Village of Rogers Park. }

[SEAL.]

I hereby certify that the within and foregoing resolution was unanimously passed and approved by the president and board of trustees of the village of Rogers Park on August 19th, 1889.

Witness my hand and the seal of the village of Rogers Park this 26th day of August, 1889.

A. W. CRAIG,
Acting Village Clerk.

Mr. PARTRIDGE: That is our case.

The defendant here rested. And thereupon the petitioner, to further maintain the issues upon his part, in rebuttal, introduced the following testimony, to wit:

WILLIAM WYATT MCGAFFEY, called as a witness on behalf of the petitioner, being first duly sworn, was examined in chief by Mr. Barton, and testified as follows:

Q. What is your name?
A. William Wyatt McGaffey.
Q. What is your occupation?
A. At present I am a clerk in the city clerk's office.
Q. How long have you been such clerk?
A. Very nearly five years.
Q. Have you with you the journal of the proceedings of the president and board of trustees of the village of Rogers Park?

150 Mr. PARTRIDGE: To that question I object. In the first place, he is not shown to be a deputy clerk. It is the city clerk, I suppose, who would have to be subpœnaed or some authorized deputy.

The COURT: What are you doing in the city clerk's office?
A. Well, I am one of the clerks there.
Q. You are a deputy clerk?
A. I have been deputized for this purpose. I was designated to bring these books here.

Mr. PARTRIDGE: To produce the books, certainly, but that does not quite reach the objection.
The COURT: The only question now is, have you in your possession those books?
Mr. PARTRIDGE: This is the identification of the books and I object to the question.
The COURT: Why?
Mr. PARTRIDGE: On the ground that it is not shown that he is a deputy clerk or that he has any means of knowledge——
The COURT (addressing the witness): Go on.
To which ruling of the court counsel for defendant then and there duly excepted.
Mr. BARTON: Did you answer the question?
The WITNESS: I answered that I had Journal B before me here of the village of Rogers Park board of trustees.

Q. Where did you bring that book—where did you get that book from?
A. From the vaults of the city clerk's office.
Q. Who directed you to bring it here?
A. I was directed by the deputy clerk, Mr. Strain.
151 The COURT: The chief deputy?
The WITNESS: Yes, sir; the only deputy.
Mr. BARTON: There is only one deputy clerk, is there not?
A. Yes, sir.
Q. He is the custodian of that book—who is the custodian?
A. The city clerk.
Q. Of the city of Chicago?
A. Of the city of Chicago.

Q. Now, will you turn to the meeting of the president and board of trustees of the village of Rogers Park of November 12th, 1888?
A. And November 12th, 1888.

Mr. PARTRIDGE: I object.
Mr. BARTON: Will you read to the court and jury the proceedings of that meeting?
Mr. PARTRIDGE: I object.
The COURT: He has no right to read that until it is offered in evidence.
Mr. BARTON: I offer the proceedings of that meeting in evidence, and ask the witness to read them.
Mr. PARTRIDGE: And I object on the ground of lack of identification of the book and of any knowledge shown by the witness as to what the book is and as to the lack of official capacity on his part to testify as to the book.
The COURT (addressing the witness): Go along.
To which ruling of the court counsel for defendant then and there duly excepted.

Mr. BARTON: Read that now, please.
A. "Regular meeting, November 12th, 1888. Present: Messrs. Daly, Phelps, Sturgis, Roberts, Phillip, & Ceperly.
"Minutes of the three previous meetings were read and approved.
152 "Mr. Phelps moved that the bill of Rogers Park Water Co. be referred back to committee, with request for them to produce contract under which the bill was made. Carried.
"Mr. Phillip, from committee on side and cross walks, recommended that sidewalks on Grand Ave. be run straight south from Touhy to Greenleaf Ave., and jog, if any occur, be remedied by moving sidewalk on south end. Carried.
"Mr. Phelps moved that warrant be drawn for the following bills: L. H. Jennings, on ac. salary, 50.00; J. L. Healy, ac. salary, 20.
"Ayes—Phelps, Sturgis, Roberts, Phillip, Ceperly.
"Nays—None.
"C. G. Kingwell, p't'g, 2.25; Miss C. P. Holmes, typewriting, 5.00."
The COURT: What do you want this for?
Mr. BARTON: To prove that the ordinance offered in evidence was not passed on November 12th as certified.
The COURT: Which ordinance?
Mr. BARTON: The ordinance which was offered in evidence by Mr. Partridge, claiming to be an ordinance passed November 12th, 1888, granting certain rights to H. E. Keeler.
Mr. PARTRIDGE: There are two books kept by the village, or should be—an ordinance book and a record of the meetings. This ordinance is certified as a true and correct copy from the ordinance book of Rogers Park, and is made by law evidence when certified.
153 The COURT (addressing witness): Go on.
A. (Reading:) "Mr. Phelps moved that an ordinance be

ordered drawn for sidewalk on west side of Ridge Ave. from north line of village to south side of Indian boundary. Carried." "Here insert amendment."

"Mr. Ceperly moved that above ordinance include sidewalk on east side of Chicago Ave. from Indian boundary to Touhy Ave. Carried.

"Mr. Phelps moved that that portion of petition covering sidewalk south from Indian boundary, on Ridge road, be referred back to petitioners. Carried.

"Bids from J. M. Kean, at 32c. per foot, and Webster Hoyt, at 35c. per foot, for building sidewalk under ordinances now incomplete, were received. Mr. Phelps moved that the contract be awarded to J. M. Kean at 32c. per foot, payment to be made when collected against property with tax levy of 1889. Carried.

"Mr. Phelps moved that the clerk be instructed to furnish list of unbuilt sidewalk and notify parties interested. Carried.

"On motion of Mr. Phelps, adjourned.

"Amendment.—The ordinance granting franchises for
Void. water supply to H. E. Keeler was read by the clerk and amendments noted.

"Mr. Phelps moved that ordinance be passed as read.

"Ayes—Phelps, Sturgis, Roberts, Phillip.

"Nays—Ceperly."

Mr. PARTRIDGE: If Mr. McGaffey will kindly refer to the part where it says, "Here insert amendment," at the foot, where
154 it is marked "amendment," I want him to read that to the court; not to the jury, but just read to the court what the amendment is that is referred to.

The WITNESS: After the adjournment, on motion of Mr. Phelps, then comes this amendment: "Amendment.—The ordinance granting the franchise of water supply to H. E. Keeler was
Void. read by the clerk and amendments noted.

Mr. Phelps moved that the ordinance be passed as read.

Ayes—Phelps, Sturgis, Roberts, Phillip.

Nays—Ceperly."

The COURT: Who scratched that out and marked on the margin "Void"?

A. I cannot say that. I heard a statement made——

Mr. PARTRIDGE: I object to the statement that you may have heard.

The COURT: You don't know except what somebody told you, is that it?

A. I know that the gentleman said that he scratched it out.

The COURT: You have not got in there, though, the part "Here insert amendment."

Mr. PARTRIDGE: Yes, your honor, he read "Here insert amendment;" that has been read.

The COURT: Very well; the balance of it there does not concern this in any way. It is conceded that there is not anything in the

balance of it down to the part on page 258 of this record, after the words "On motion of Mr. Phelps, adjourned."

155 Mr. BARTON: I don't know that there is any use of his reading it. It is for the court, and not the jury, and the court has read it now.

The COURT: Yes.

Mr. PARTRIDGE: I desire to read—well, if you don't care for anything further, that is different.

Mr. BARTON: It is not for the jury.

Mr. PARTRIDGE: That depends; it may be.

The COURT: This book cannot go into the record, and the only way you can get it in is to have it read. Where did you stop reading?

A. I stopped right there.

Mr. BARTON: If it is not very much I would prefer so that it will show, "From north line of village to south side of Indian boundary. Carried."

The WITNESS (reading): "Here insert amendment," and the mark goes up to the head of that paragraph on this margin.

The COURT: Goes up to the line just ahead of the word "Phelps."

A. "Mr. C-perly moved that above ordinance include sidewalk on east side of Chicago avenue from Indian boundary to Tuohy Ave. Carried."

The COURT: On the margin of that page is written the word "Void," and twelve pencil marks—straight pencil marks—six each way, over the face of that part of the record, are drawn by somebody.

Mr. PARTRIDGE: I desire the court to state in the reporter that the word "Void" is also written in pencil.

The COURT: Yes; the word "Void" is written in pencil.

Mr. BARTON: When did you first see that book, Mr. McGaffey?

156 A. Well, I have seen the book ever since I have been in his office; known of its existence; but for this particular part, about two or three weeks ago——

Q. How long have you been in the office?

A. Ever since the annexation of Rogers Park.

Q. Who received the books and papers of Rogers Park after the annexation?

A. The city clerk or his representative.

Q. Who was his representative?

A. I think there is a memorandum in the vault saying that a Mr. Cook is.

Q. Were you present?

A. No, sir; I was not.

Q. How long after the annexation did you know of this book? Were you in the office at the time of the annexation?

A. I think not. I think the annexation occurred in 1892. I was in the office when Rogers Park was assigned to the ward that it now is in.

Q. And when did you first go in the office?

A. In 1893—May 1st, 1893.

Q. Do you know who made the marks across that part of the record which is marked "Amendment," and who wrote the word "Void"?

Mr. PARTRIDGE: Well, if he knows.

The COURT: Yes, of your own knowledge do you know?

A. I can only state what was told me by the gentleman who said that he made the marks.

Mr. PARTRIDGE: Of course, your honor, I will object to any statement of the kind.

157 The WITNESS: I did not see him make the marks.

Mr. BARTON: Have you any information received from the person who had the custody—the legal custody—of the record, as an official of the village of Rogers Park?

Mr. PARTRIDGE: I object to that question.

The COURT: Well, that question is competent, but the next one is the material one. All you can do is to say either yes or no.

A. Well, I know. Can I say who informed me?

Q. You are asked if you have knowledge, and so forth.

A. Yes; I have.

Mr. BARTON: Communicated to you as an employee of the city of Chicago?

Mr. PARTRIDGE: I object to that question, your honor.

Mr. BARTON: What was your occupation when that was communicated to you?

A. I was in the city clerk's office, an employee.

Q. I will ask you what that communication was.

Mr. PARTRIDGE: I object.

The COURT: And the objection is sustained.

To which ruling of the court counsel for petitioner then and there duly excepted.

Mr. BARTON: When did you first see those pencil marks and the word "Void" written in pencil?

A. I think after the subpœna was served. The subpœna was handed to me to produce the books, and I looked up the matter, got out the book.

Q. Did you ever see the part marked "Amendment" without those erasures or erasing marks or the word "Void"?

A. I don't remember that I ever did.

158 Q. Do you know whether or not that was done in the office of the city clerk?

A. I don't think that it was.

Mr. PARTRIDGE: I object to that answer, your honor.

Mr. BARTON: If he knows of his own knowledge.

The COURT: If you know, witness, you can tell; if you don't know, why, say so.

A. I don't know.

Mr. BARTON: That is all.

Mr. PARTRIDGE: That is all.

The COURT: That closes the evidence on both sides?

Mr. PARTRIDGE: I believe so.

The COURT: Well, do you want to talk on it?

Mr. PARTRIDGE: I have some instructions, your honor, that I want to submit to the court. They contain my argument. There is one thing that will have to be done. It will be necessary in some way to get before the jury the rates assigned by the ordinance are higher than the amount tendered by the petitioner.

The COURT: Well, you can agree on that. You have practically stated that it was about four or five dollars every six months.

Mr. BARTON: Have you figured up this tender of ours on the fixtures?

Mr. PARTRIDGE: I think that it was about $13. I knew the amount was materially more.

The COURT: It is conceded here that the amount tendered is the amount fixed by the city ordinance.

Mr. PARTRIDGE: Well, it is denied in the pleadings, and I am not prepared to admit it.

Mr. BARTON: Well, your honor, I have figured it up, and unless the case is closed I will be sworn and testify that I have figured up the amount.

159

The COURT: Well, swear Mr. Barton, then.

JESSE B. BARTON, being first duly sworn on behalf of the petitioner, testified as follows:

I have estimated the rates charged under the city ordinance offered in evidence, and allowing the discount I find that it is, the amount for six months, the six months beginning the first of November——

The COURT: That is, the amount tendered by the petitioner was the amount fixed by the city ordinance?

A. For the six months.

Q. Yes.

A. The tender, if the court please, was made on the 11th of December, and a month from the 3rd had already elapsed up to the time—of course, he would not be obliged to pay——

Q. No; but was the tender made within the time prescribed by the ordinance?

A. Yes, your honor.

Q. To get the discount?

A. Yes, your honor.

Q. So that the tender——

A. Was made on the 11th day of December.

Q. Then the amount tendered at that time was the amount that the city ordinance provided for at that time?

A. Yes, sir.

Q. For premises of that kind?

A. Yes, sir.

Q. But was how much less?

Mr. PARTRIDGE: It was at least four dollars less, at least four dollars less than the rate provided for and demanded by the Rogers Park Water Company.

The COURT: It was.

160 Mr. PARTRIDGE: Yes, sir; according to the rates prescribed in the ordinance introduced in evidence.

Which was all the evidence offered or received on the trial of said cause.

And thereupon, at the request of the plaintiff's counsel, the court instructed the jury as follows:

"The jury are instructed to find the issues for the petitioner;" to the giving of which instruction the defendant, by its counsel, then and there duly excepted.

And thereupon counsel for the defendant requested the court to give to the jury the following instructions:

1. "The court instructs the jury that the burden of proof is upon the petitioner to prove the allegations of his petition which have been denied by the defendant. Upon such issues he must sustain his side of the case by a preponderance or the greater weight of testimony before you can find in his favor upon them."

2. "The court instructs the jury that the ordinance and proceedings which have been introduced in evidence and under which the defendant located and constructed its water works and system for pumping and distributing water are valid and binding on the petitioner in this case, and that the defendant was entitled to demand and receive from the petitioner the rates for water therein provided for; and if the jury find from the evidence that the petitioner Fergus refused to pay the said rates, then such refusal was wrongful and he cannot recover."

161 3. "If the jury find from the evidence in this case that the defendant, The Rogers Park Water Company, is engaged in the business of pumping and distributing water in the portion of the city of Chicago alleged in said petition, and that the said pumping works and water pipes and appliances of said defendant have been constructed and located pursuant to the ordinance which has been shown in evidence, and that the said works have been accepted by the board of trustees of said village of Rogers Park, then the court instructs the jury as a matter of law that the petitioner cannot question or deny in this proceeding that the said works and water pipes have been properly constructed and located, nor that the said ordinance is valid."

4. "The court instructs the jury as a matter of law that the petitioner cannot in this case deny or question the validity of the proceedings and ordinances under which the defendant, The Rogers Park Water Company, located and constructed its said water works, pipes, and system."

5. "The court instructs the jury that the ordinance and proceedings under which the defendant located and constructed its said

water works, if the jury find from the evidence that the defendant did so locate and construct said works, together with the acceptance of said ordinance, the location and construction of said water works by the defendant, and the assignment of said ordinance by said Keeler to the defendant, if the jury find from the evidence that said ordinance was so assigned, and the acceptance of said water works by the board of trustees of said village of Rogers Park, and the continuous operation of said water works and compliance with the terms and conditions of said ordinance by the defendant, if the jury so find from the evidence, constituted a valid contract which
162 was binding alike upon said city of Chicago and the Rogers Park Water Company, and that the city of Chicago had no legal right to pass the said ordinance mentioned in said petition without the consent of the defendant, and that said ordinance was void and not binding on the defendant."

6. "The court instructs the jury that if they find from the evidence that the petitioner, J. B. Fergus, as owner, signed and delivered to the defendant an application for a supply of water for the premises in said petition described before said premises were connected with the water mains of the defendant, as therein alleged; that said application so signed by him provided that said water should be supplied to him subject to the rules and regulations of said defendant company then in force or which might thereafter be enacted or adopted, and that said rules and regulations provided for the payment for water by said Fergus according to the terms and at the rate demanded of said Fergus by the defendant for the half year from the 1st of November, 1897, to the 30th of April, 1898, inclusive, and that pursuant to said application and in consequence thereof the defendant proceeded to have its said water mains tapped and a supply provided through said mains and a connecting pipe, as alleged in said petition, then the said application and its acceptance by the defendant constituted a contract binding in law on said Fergus; and if the jury further believe from the evidence that said rules and regulations provided for the rate of payment by the petitioner for such supply of water, and that the supply of water for said premises was shut off by the defendant in consequence of a
163 refusal or the neglect of said Fergus to pay for said supply of water as provided in the said rules and regulations, then the petitioner cannot recover in this case, and your verdict must be for the defendant."

7. "The jury are instructed to find — favor of the defendant."

But to give the said instructions or either of them to the jury the court then and there refused; to which refusal of the court to give the said instructions and each of them to the jury counsel for defendant then and there duly excepted.

The COURT: The jury are instructed to find the issues for the petitioner.

Mr. BARTON: I ask the court for judgment ordering a peremptory writ of mandamus.

Mr. PARTRIDGE: I desire to move at the proper time for a new trial, of course.

The COURT: Motion — new trial by defendant overruled and exception.

Mr. PARTRIDGE: In arrest of judgment.

The COURT: And motion in arrest of judgment overruled and exception.

And forasmuch as the matters and things aforesaid do not otherwise appear of record in said cause, the defendant, by its counsel, presents this its bill of exceptions and prays that the same may be signed and sealed by the judge of said court as provided by law, which is accordingly done this 14th day of April, A. D. 1898.

ELBRIDGE HANECY, *Judge.* [SEAL.]

O K.

JESSE B. BARTON,
Attorney for Petitioner.

164 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

JOHN B. FERGUS
vs.
ROGERS PARK WATER COMPANY, a Corporation, etc. } Petition for Mandamus.

It is hereby stipulated by the parties in the above-entitled cause, by their respective counsels, that the original bill of exceptions may be used as part of the record in said cause upon an appeal thereof instead of a transcript of said bill of exceptions.

Dated Chicago, April 11th, A. D. 1898.

JESSE B. BARTON,
Attorney for Petitioner.
PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

Be it remembered that heretofore, to wit, on the 25th day of March, A. D. 1898, a certain appeal bond was filed in the office of the clerk of said court in words and figures following, to wit:

165 Know all men by these presents that we, Rogers Park Water Company, as principal, and Hervey E. Keeler, as surety, of the county of Cook and State of Illinois, are held and firmly bound unto John B. Fergus, also of the same county and State, in the penal sum of two hundred and fifty ($250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, jointly, severally, and firmly, by these presents.

Witness our hands and seals this 25th day of March, A. D. 1898.

The condition of the above obligation is such that whereas the said John B. Fergus did on the 25th day of March, A. D. 1898, in the circuit court of Cook county, in the State aforesaid, and of the March term thereof, A. D. 1898, recover a judgment against the

above-bounden Rogers Park Water Company for costs of suit: from which said judgment of the said circuit court of Cook county the said Rogers Park Water Company has prayed for and obtained an appeal to the supreme court within and for the said State:

Now, therefore, if the said Rogers Park Water Company shall duly prosecute its said appeal with effect, and, moreover, pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against it in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void: otherwise to remain in full force and virtue.

[CORP. SEAL.]

ROGERS PARK WATER COMPANY, [SEAL.]
By H. E. KEELER, *President.* [SEAL.]
HERVEY E. KEELER. [SEAL.]

Approved:
JOHN A. COOKE, *Clerk.*

166 STATE OF ILLINOIS, }
Cook County. }

I, John A. Cooke, clerk of the circuit court of Cook county and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of a record, except the bill of exceptions, the original of which is incorporated herein by stipulation, in a certain cause lately pending in said court on the common-law side thereof, between John B. Fergus, petitioner, and Rogers Park Water Company (a corp.), defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 21st day of April, 1898.

[SEAL.] JOHN A. COOKE, *Clerk.*

167 In the Supreme Court of Illinois, June Term, 1898.

ROGERS PARK WATER COMPANY, Appellant,
vs.
JOHN B. FERGUS, Appellee. } Appeal from Circuit Court, Cook County.

Assignment of Error.

Now comes this defendant, by Partridge & Partridge, its attorneys, and shows to the court here that there is manifest error in the said records and proceedings in this:

1. Said court erred in improperly admitting evidence upon the trial of said cause on behalf of petitioner against the objection of the defendant.

2. Said court gave improper instructions to the jury upon the trial of said cause at the request of the petitioner and against the objection of the defendant.

3. Said court refused proper instructions to the jury upon the trial of said cause which were requested by the defendant.

4. Said court improperly overruled the demurrer of the defendant to the fourth plea of the petitioner.

168 5. Said court improperly sustained the demurrers of the petitioner to the first answer of the defendant.

6. Said court improperly sustained the demurrers of the petitioner to the third answer of the defendant.

7. Said court erred in overruling defendant's motion for a new trial.

8. Said court erred in overruling defendant's motion in arrest of judgment.

9. Said court erred in rendering and entering judgment upon the verdict in favor of the petitioner and against the defendant.

10. Said proceedings are otherwise erroneous.

Wherefore the appellant prays that the said judgment may be reversed, etc.

PARTRIDGE & PARTRIDGE,
Attorneys for Defendant.

169 And afterwards, to wit, on the ninth day of June, A. D. 1898, the same being one of the days of the term of court aforesaid, the following proceedings were had by said court and entered of record in the words and figures following, viz:

ROGERS PARK WATER COMPANY
vs.
JOHN B. FERGUS. } 337. Appeal from Cook.

And now, on this day, comes the said appellant, by Partridge & Partridge, attorneys, and moves the court for an extension of time in which to file briefs.

Which motion is by the court taken under advisement.

170 And afterwards, to wit, on the tenth day of June, A. D. 1898, certain proceedings were had by said court and entered of record in the words and figures following, viz:

ROGERS PARK WATER COMPANY
vs.
JOHN B. FERGUS. } 337. Appeal from Cook.

And now, on this day, the court having duly considered the motion of appellant for time to file briefs herein, and being fully advised in the premises, it is considered and ordered by the court that the time — file appellant's briefs herein be extended to June 15th.

171 And afterwards, to wit, on the 20th day of June, A. D. 1898, certain proceedings were had by said court and entered of record in the words and figures following, viz:

ROGERS PARK WATER COMPANY
vs.
JOHN B. FERGUS. } 337. Appeal from Cook.

And now, on this day, comes the said appellant, by counsel, and moves the court for an extension of time to file a brief herein in reply to the brief of appellee.

Which motion is taken under advisement by the court.

172 And afterwards, to wit, on the day and year last aforesaid, certain other proceedings were had by said court and entered of record as follows:

ROGERS PARK WATER COMPANY
vs.
JOHN B. FERGUS. } 337. Appeal from Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

173 And afterwards, to wit, on the 22nd day of June, A. D. 1898, certain proceedings were had by said court and entered of record, among which is the following, viz:

ROGERS PARK WATER WORKS
vs.
JOHN B. FERGUS. } 337. Appeal from Cook.

And now, on this day, the court having duly considered the motion of appellant for an extension of time to file reply briefs herein, and being fully advised in the premises, it is considered and ordered by the court that time to file reply briefs herein be overruled and denied.

174 At a supreme court begun and held at Springfield on Tuesday, the seventh day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice;

Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the seventeenth day of February, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

ROGERS PARK WATER COMPANY, a Corporation, v. JOHN B. FERGUS. } No. 337. Appeal from Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error; therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor.

175 At a supreme court begun and held at Springfield on Tuesday, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jessie J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the seventeenth day of February, 1899, the opinion of the court was filed in the words and figures following, to wit:

ROGERS PARK WATER CO. vs. JOHN B. FERGUS. } No. 199. Error to —. Appeal from Cook.

176 Docket No. 337.—Agenda 56.—Northern Div.—June, '98.

ROGERS PARK WATER COMPANY vs. JOHN B. FERGUS.

Mr. Justice BOGGS delivered the opinion of the court:

On the 12th day of November, 1888, the village of Rogers Park, in Cook county, was organized under the general act providing for the incorporation of cities and villages. On the 4th day of April, 1893, the village was annexed to and became a part of the city of Chicago. The appellant company is a corporation organized under the general statute providing for the formation of corporations, the object for which it was incorporated being "to locate, construct, and operate a system of water works in the village of Rogers Park." On the 4th day of October, 1897, the city council of the city of Chicago passed an ordinance fixing the maximum rates to be charged for water furnished to the inhabitants of that part of the territory of the said city which had formerly composed the village of Rogers Park, making water rates in such territory uniform with the rates provided by other ordinances to be paid in other portions of the city. The appellee, who occupied premises situate within the former limits of the said village of Rogers Park, which premises were supplied with water from the water mains of the appellant company, filed this a petition for a writ of mandamus to require the appellant company to furnish water at the rates fixed by the said ordinance of the city of Chicago. The appellant company pleaded the village of Rogers Park, prior to the annexation thereof to the city of Chicago, on November 12, 1888, adopted an ordinance granting to it the exclusive right of laying pipes and mains and other conduits in the streets, alleys, and public places in the said village, for the purpose of furnishing and conducting an adequate supply of water to said village, and the inhabitants thereof, for public and private use for and during the period of thirty years, and by the same ordinance fixed the rates to be charged to individual consumers of water during the said period of thirty years; and that in pursuance of said ordinance it completed and put in operation a system of water works, and was ready and willing to furnish the appellee with water at the rate fixed by the said ordinance of the said village of Rogers Park, and that it was not legally required to accept the rates fixed by the ordinance of the city of Chicago, the maximum rates fixed by the city of Chicago
177 being lower than the maximum rates fixed by the ordinance of the said village for the same service. After a trial the court entered a judgment awarding a peremptory writ as prayed by the appellee, from which judgment this appeal is prosecuted.

The appellant corporation voluntarily sought corporate existence

in order to enable it to engage in an enterprise essentially public in its character, in the prosecution of which it would be necessary the property of the corporation should be devoted to a use in which the public had an interest. For the accommodation of the business it designed to pursue it was necessary it should secure, and it did secure a special privilege to occupy the streets, alleys and public places of the village of Rogers Park. This license was granted because it was engaged in a business of extreme necessity to the inhabitants of the village. It is not a private but a *quasi* public corporation, and is subject to be controlled by the public with relation to the rates to be exacted for the commodity it was created to supply to the public. Power is possessed by the State to prevent extortion by such *quasi* public corporations, and to restrict them to the exaction of reasonable rates and charges. (*Munn v. People*, 69 Ill., 80; *Ruggles v. People*, 91 *id.*, 256; *Munn v. People*, 94 U. S., 113; *Spring Valley Water Works v. Schotten*, 110 *id.*, 347; Beach on Public Corp., secs. 2, 3; *Hanger v. Water Co.*, 28 Pac. Rep., 244; Tiedeman on Limitation of Police Power, sec. 93.) We do not understand counsel for appellant antagonize this as the true view of the law. But the position of the appellant company seems to be, the alleged ordinance of the village of Rogers Park was a proposition on the part of the village to it to construct and maintain a system of water works in the village for a period of thirty years, and that to induce it to accept such proposition and provide a supply of water for the village and its inhabitants the rates to be paid by the village and by the inhabitants thereof for water during that period were fixed and prescribed by the terms and conditions of the ordinance; that it accepted said ordinance in view of the prices and rates so fixed, and having constructed the system of water works in accordance with the provisions of the ordinance, and having in all other respects complied with its terms, the ordinance, the acceptance thereof and fulfillment by it of all things required to be done upon its part constituted a binding, irrevocable contract.

178 The ordinance of the city of Chicago requires the appellant company shall accept the same scale of prices for the water supplied to the inhabitants of that part of the said city which was formerly embraced within the limits of the village of Rogers Park as is paid by the consumers of water in other portions of the city. This scale of prices is lower than the rates fixed by the alleged ordinance of the village of Rogers Park. The argument of counsel for the appellant company is, that the provisions in the alleged ordinance of the village of Rogers Park fixing the rates to be charged by it for water, and its acceptance of the said ordinance and compliance therewith, constitute a property right of the appellant company and an irrevocable contract right, and that the ordinance of the city of Chicago contravenes section 2 of article 2 of the constitution of 1870, which provides no one shall be deprived of property without due process of law, and also is in violation of section 14 of the same article of the constitution, which prohibits the enactment of any law impairing the obligation of a contract,

and that for these reasons said ordinance of the city of Chicago is void.

We do not think the adoption of the alleged ordinance by the village of Rogers Park and the acceptance and fulfillment of the conditions thereof by the appellant company vested it, as with a property right, with the power to demand that the rates named in the ordinance should remain fixed and unchanged for the period in which it was licensed to occupy the streets of the village, or that the ordinance and its acceptance constituted a contract, or that any contract obligations arose by reason thereof. The appellant company stood charged with a legal duty to supply water to the inhabitants of the village for a reasonable compensation. It received corporate existence in order to enable it to discharge that duty, and the State possessed ample power to enforce the performance of that duty. The power possessed by the State to enforce the duty might be properly exercised by establishing a scale of rates and prices to be demanded by the company from the inhabitants of the village, and this power, and that mode of exercising it, were delegated by the State to the village by section 1, article 10, chapter 24 of our statutes. (Starr & Curtis' Stat. 1896, p. 785.) The village exercised the power by incorporating in the ordinance a scale of prices as being just and reasonable maximum rates to be
179 paid to the company by the consumer of water. This provision of the ordinance had no effect to establish a contract between the appellant company and the village that the individual inhabitants of the village should and would pay such rates for the period of thirty years, or any fixed period of time, but was simply a declaration on the part of the village that such rates were reasonable. The legal effect was to establish, *prima facie*, the corporation, in order to discharge the duty it owed to the public, must supply the commodity it had been created to supply at the prices named in the ordinance. It was a mode of regulating and enforcing the discharge of a legal duty—not a proposition looking toward a contract. No contract was necessary to create an obligation on the part of the corporation to supply water at a reasonable rate, for that rested upon it as a duty.

Nor did the fixing of rates by the alleged ordinance of the village of Rogers Park vest in the appellant company an irrevocable right to exact such rates for the period it had been granted permission to occupy the streets, alleys and public places of the village, or for any fixed period. A rate or price reasonable and just when fixed may, in the future, become so unreasonably high that the exaction of such rate or price is but an extortion. The duty of the corporation does not, however, change, but remains the same,—that is, to exact only reasonable compensation. The power of the State to enforce that duty is not exhausted by its exercise in the first or any subsequent instance, but is continuous, and may be exerted from time to time, whenever necessary to prevent extortion by the agency created by the State to serve the public. Whenever the evil of extortion exists the power to eradicate it may be successfully invoked. In the exercise of that power by the State, or by a municipality

exercising the power by delegation from the State, there is no admixture whatever of any contractual element, nor does the corporation against whom the power is exercised obtain any vested property interest or property right in the scale of rates deemed at any particular time to be reasonable maximum prices for the article to be supplied by the corporation. The annexation of the village of Rogers Park to the city of Chicago operated to clothe the city council of the city with ample authority to determine, *prima facie*,
whether the rates demanded by the appellant company for
180 water supplied to the inhabitants of that part of the city
which was formerly within the limits of the village were reasonable, and to enact an ordinance reducing such rates if deemed by the council to be extortionate.

It is suggested the members of the city council are elected by the people, and are agents of the people, and that the action of the council in fixing the prices to be paid for water is, in effect, that of those who are to purchase water, and is therefore violative of the general principle no man shall be a judge of his own case. If there is any force in this view it is destructive of the doctrine, in its entirety, that the State is possessed of power to restrict, within reasonable limits, the charges of *quasi* public corporations, for the State acts through the members of the General Assembly, who are the agents and representatives of those who are to be benefited by such restrictions. The suggestions omit from consideration the controlling fact that *quasi* public corporations are created by the State for the good of the public,—to serve the public,—and that they accept corporate life subject to the power retained by their creator to regulate and control them for the public good. The General Assembly is the legislative department of the State, and the city council is the governing board, and in a sense the legislative department, of the city. The members of each of those bodies act in their official capacity, and are bound, in morals and in law, to act honestly, conscientiously and impartially, and with due regard for the rights and interests of all who may be affected by their official determination. The best interests of the public will not be subserved by denying fair and reasonable profits and gain for services to be rendered by *quasi* public corporations to the people, for the reason that if insufficiently remunerated such corporations cannot exist. The public good, therefore, demands unselfish, conscientious and patriotic treatment of the question at the hands of those entrusted with the duty and power to consider and determine as to the interests of the people and of the corporations, which, properly viewed and judged, are and should be mutual. It is not to be assumed a duty so obvious will be willfully disregarded, and that narrow and selfish considerations will prevail and control such representative bodies. Nor are the corporations left without remedy against unwarranted and unjustifiable acts of the municipal council. If the scale of rates
181 established by a city council is deemed by the corporation
to be unreasonably low and unjust, it is expressly provided the action of the council may be reviewed and determined by the

courts on application of the corporation. Starr & Curtis' Stat. 1896, chap. 24, par. 458, p. 868.

The contention here is not that the rates fixed by the city council of Chicago are so low as to be oppressive, but that the rates fixed by the ordinance of the village are unalterable for a period of thirty years. That contention cannot be maintained. Appellee, on May 17, 1897, signed an application to the appellant company to be supplied with water, "subject to the rules and regulations of the company now in force or hereafter to be enacted or adopted, which rules and regulations are hereby made and declared to be part of the contract between me (appellee) and the said company for supplying said premises with water." The application was accepted and appellee received water thereunder, and paid the rates fixed by the ordinance of the village, and the rules of the company framed thereunder, until December 11, 1897. On October 18, 1897, the city council of the city of Chicago adopted the ordinance reducing the rates, and on December 11, 1897, appellee tendered payment for a future supply of water according to such reduced rates, which being refused, he filed this petition to require the appellant company to submit to the provisions of the ordinance of the city as to the amount to be paid by him. There is no force in the insistence his application and its acceptance constituted a contract on his part to pay indefinitely, or during the period of thirty years, at the rate fixed by the rules and regulations of the company framed under the ordinance of the village. It but bound him to pay such rates only so long as the appellant had lawful right to demand and receive the prices fixed by the ordinance of the village. The rules and regulations in force referred to in the application became inoperative by force of law as to the rate to be paid when a new scale of rates was established by the ordinance of the city.

The view we have taken of the question here involved rendered it unnecessary we should determine the contention of the appellee that the alleged ordinance of the village, set out in the pleading by the appellant company, had not been legally adopted by the board of trustees of the village.

The judgment is affirmed.

Judgment affirmed.

182 STATE OF ILLINOIS, } ss.
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, Ap'l 20, 1899.

[Seal of the Supreme Court, State of Illinois. Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

183 At a supreme court begun and held at Springfield on Tuesday, the fourth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the sixth day of April, A. D. 1899, the same being one of the days of the term of court aforesaid, certain proceedings were had by said court and orders entered of record as follows:

ROGERS PARK WATER COMPANY *vs.* JOHN B. FERGUS. } 337. 3 R. H. Appeal from Cook.

And now, on this day, the court having duly considered the petition for rehearing filed herein by the appellant and being fully advised of and concerning the premises, it is considered and ordered by the court that the said petition for rehearing be overruled and denied at the costs of said appellant.

184 In the Supreme Court of Illinois.

ROGERS PARK WATER COMPANY, Appellant, *vs.* JOHN B. FERGUS, Appellee.

Petition for Citation.

To the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois:

Now comes the Rogers Park Water Company, a corporation, by Partridge & Partridge, its attorneys, and shows to the chief justice of the supreme court of the State of Illinois that in the record and proceedings and also in the rendition of the judgment in the above-entitled cause, lately pending in the supreme court of the State of Illinois, between said Rogers Park Water Company, appellant, and John B. Fergus, appellee, and in which final judgment was rendered against said Rogers Park Water Company, appellant, on the sixth (6th) day of April, A. D. 1899, in said suit, it appears by the record now remaining in the supreme court of Illinois that certain rights and priveleges were claimed under the Constitution of the United States by said Rogers Park Water Company, and that said supreme court of Illinois erroneously decided against
185 said rights and priveleges of said Rogers Park Water Company which were specially set up and claimed under such Constitution; and, further, that the validity of the authority exercised under said State of Illinois was drawn in question in said suit by said Rogers

Park Water Company, on the ground that said authority was repugnant to the Constitution of the United States, and the decision of said supreme court of Illinois was in favor of the validity of said authority so exercised; from all of which said Rogers Park Water Company alleges that it appears in the said record and proceedings in said suit manifest error has occurred, to the great damage of said Rogers Park Water Company.

Wherefore said Rogers Park Water Company respectfully asks that there should be granted unto it, under and pursuant to the acts of Congress in such case made and provided, a writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois, that the said record may be reviewed and the said error therein may be corrected and speedy justice done in the premises, and that said writ of error may be made a supersedeas; that a citation may be issued herein, pursuant to law, citing and admonishing the said John B. Fergus to be and appear at the Supreme Court of the United States, at Washington, according to the usual course and practice in such cases; that the supersedeas bond herewith presented to the court may be duly approved, and that such other and further orders and proceedings may be had and
186 entered herein as may be necessary fully to grant to said Rogers Park Water Company the relief herein prayed for, according to the usual course and practice in such cases.

And your petitioner will ever pray, etc.

ROGERS PARK WATER COMPANY,
By H. E. KEELER, *President.*

PARTRIDGE & PARTRIDGE,
Attorneys for Petitioner.

Know all men by these presents that we, The Rogers Park Water Company, a corporation organized and existing under the laws of the State of Illinois, as principal, and Hervey E. Keeler, of Chicago, Cook county, Illinois, are held and firmly bound unto John B. Fergus, his heirs and assigns, in the sum of five hundred ($500.00) dollars; for the payment of which, well and truly to be made, we, said Rogers Park Water Company, for itself, its successors and assigns, and the said Hervey E. Keeler, his heirs, executors, and administrators, bind ourselves, jointly and severally, firmly by these presents.

Witness our hands and seals this 14th day of April, A. D. 1899.

The condition of this obligation is such that whereas the said Rogers Park Water Company was, by the order and judgment of the supreme court of Illinois, made subject to a peremptory writ of mandamus, which order and judgment was entered
187 in said court on the sixth day of April, A. D. 1899, in that certain cause then therein depending, wherein said Rogers Park Water Company was appellant and said John B. Fergus was appellee, on which said day said supreme court denied the petition of said Rogers Park Water Company for a rehearing of said cause;

And whereas, further, said Rogers Park Water Company has sued out a writ of error from the Supreme Court of the United States to reverse the said order and judgment of the supreme court of Illinois:

Now, therefore, if the above-bounden Rogers Park Water Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

ROGERS PARK WATER COMPANY,
By H. E. KEELER, *Its President.*
HERVEY E. KEELER. [SEAL.]

Attest: CHAS. HOWARD, *Secretary.* [SEAL.]

O K.
JESSE B. BARTON,
Att'y for Appellee.

STATE OF ILLINOIS, } ss.:
County of Cook, }

Hervey E. Keeler, being first duly sworn, on oath deposes and says that he is a citizen of the United States and of the State of Illinois and a resident of the city of Chicago; that he executed the above and foregoing bond for the uses and purposes therein men-
188 tioned, and that he is worth one thousand ($1,00-) dollars and upwards over and above all his debts and liabilities in property not by law exempt from execution.

And further affiant saith not.

[SEAL.] HERVEY E. KEELER.

Subscribed and sworn to before me this 13th day of April, A. D. 1899.

LYMAN H. PARTRIDGE,
Notary Public.

The above and foregoing bond is approved this 14th day of April, A. D. 1899.

JOSEPH N. CARTER,
Chief Justice of the Supreme Court of Illinois.

Endorsed on cover: File No., 17,407. Illinois supreme court. Term No., 295. The Rogers Park Water Company, plaintiff in error, *vs.* John B. Fergus. Filed May 12th, 1899.